

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42543
Docket No. MW-42159
17-3-NRAB-00003-130108**

The Third Division consisted of the regular members and in addition Referee Roger K. MacDougall when award was rendered.

PARTIES TO DISPUTE: (
(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
(Union Pacific Railroad Company (former Missouri
(Pacific Railroad)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier withheld Mr. K. Hellums from service beginning on October 11, 2011 and continuing (System File UP281WF11/1563510 MPR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant K. Hellums shall now be compensated at the applicable trackman rate of pay for all lost straight time and overtime hours beginning October 11, 2011 and continuing.”**

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

This is a case involving an employee, in a safety sensitive position, who has had three seizures in six years. The Carrier withheld him from service. The Organization filed this claim on his behalf.

It is not disputed that the Carrier has the right, upon reasonable cause, to subject an employee to an appropriate medical evaluation to determine fitness for duty.

On August 11, 2011, the Claimant experienced a seizure in his Carrier-provided hotel room. He was taken to the hospital and checked. His supervisor, in accordance with Section 2.5(b) of the Carrier's Medical Rules advised the Carrier's Health and Medical Services (HMS) Department that he was going to temporarily remove the Claimant from service until he had undergone a medical evaluation to assess whether or not he was able to return to service to his trackman position. He subsequently met his doctor on August 25 and then underwent a series of medical examinations. On October 11, the Claimant met with his doctor to receive the results of these evaluations. He was advised by his doctor that the seizures were likely the result of lack of sleep and he was advised he could return to work, but could not operate a Carrier vehicle or heavy equipment, according to the Organization.

The Carrier did not allow the Claimant to return to work, but instead had him see a Carrier-mandated doctor on November 1, 2011. This doctor's report was furnished to the Carrier on November 4, 2011, with the same restrictions on his return to work.

The Carrier says that the restrictions included not working around live track, not working at unprotected heights of three feet or more and not operating Carrier vehicles.

The Carrier says that these restrictions permanently prevent the Claimant from returning to his position as a trackman and have not allowed him to return to service to this date.

The Board carefully reviewed the evidence before it. It finds that the Claimant's own doctor actually said, on September 30, 2011, that ". . . after consultation with another board certified neurologist and according to the State Board of Medical Examiners and the Dept. of Public Safety, a patient must be seizure free

for at least 6 months, unless we can determine something else may have caused the LOC (loss of consciousness) such as a lack of sleep or something of that nature . . . I feel most likely he has had a seizure . . . EE is not able to return to any heavy-duty work, or work around any heavy equipment at the railroad unless we can ascertain what the exact cause of his LOC was.”

The second doctor stated that epilepsy could not be ruled out. He went on to say that the Claimant had not been sleep deprived when the seizure occurred. He concluded that the Claimant had a seizure disorder. He recommended a sleep deprived EEG study. On November 28, 2011, such a study was performed. The Carrier received the results on December 6, 2011. The study indicated that the sleep deprived EEG was “normal.” As a result, the Carrier’s doctors determined that the Claimant should have permanent seizure restrictions. These included not operating company vehicles, on-track or mobile equipment, forklifts, cranes or hoists. Further, the Claimant was restricted from working around moving trains or live tracks. Finally, he was restricted from working at heights of three feet above the ground or more.

The Board finds that these restrictions do, as the Carrier says, unfortunately prevent the Claimant from returning to his position as a trackman. The position of the Carrier is not unreasonable. As a result, this claim must fail.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 6th day of March 2017.