

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43025  
Docket No. MW-42466  
18-3-NRAB-00003-140070**

**The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.**

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

**STATEMENT OF CLAIM:**

**"Claim of the System Committee of the Brotherhood that:**

- (1) The Agreement was violated when the Carrier withheld Mr. J. Thomas from service beginning on August 3, 2012 and continuing (System File UP316WF12/1578260 MPR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. Thomas shall now be compensated ‘... for all hours at his respective straight time rate of pay and all hours at his respective overtime rate of pay, from August 3, 2012 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 claim seeks compensation for the Claimant due to his removal from service on August 3, 2012 for medical evaluation based on his Manager's observations and concerns for his health and safety. The Claimant was directed to undergo a fitness for duty (FFD) exam, a medical evaluation, and to provide medical documentation. The record contains progress notes from the Carrier's Health Services Department (HSD) as well as a medical note from the Claimant's physician dated August 31, 2012 releasing him to return to work, while divulging certain medical conditions that raised additional medical concerns to the Carrier, including information about a particular medication he was taking for pain and his history of severe OSA and use of CPAP. The Carrier requested additional medical documentation, which, its records reveal, were furnished to the HSD by the end of September, 2012. The Carrier's Chief Medical Officer (CMO) reviewed all medical records, and removed any restrictions, releasing him to return to work on October 5, 2012. Although some of the correspondence indicates that the Claimant was not returned to service until November 12, 2012, the Claimant's job and pay records reveal that he was returned to service on October 5, 2012.

The Organization asserts that there was no valid reason to withhold the Claimant from service, as he explained what occurred on August 2, taking issue with the accuracy of the Manager's account. It contends that, at least as of his physician's letter of August 31, 2012 releasing him to return to work without restrictions, the Claimant should have been returned to work, and it argues that the Carrier unreasonably delayed evaluating him and returning him without justification, requiring compensation for the excessive amount of time, citing Third Division Awards 40332 and 32328.

The Carrier argues that it has the recognized right to establish medical standards and to medically withhold an employee from service with conditions that could impact his and others safety, and that it properly did so in this case. It maintains that receipt of information concerning the Claimant's ongoing medical conditions and medication raised concerns supporting its request for additional testing and submission of documents. The Carrier contends that, once it had all of the medical information, and it was reviewed by the CMO, it met its responsibility to act expeditiously in returning the Claimant to service on October 5, 2012, and there is no basis for monetary relief for delay, relying on Third Division Awards 25013, 38251; PLB No. 6302, Award 8.

A careful review of the record convinces the Board that the Organization has failed to sustain its burden of proof in this case. The Carrier clearly has the right to set medical standards and remove an employee from service to assure he is fit to work safely. The Manager's statement provides an adequate basis upon which the Claimant was removed from service and sent for a FFD evaluation. There was no showing that the Carrier was responsible for any delay in scheduling the FFD examination, or was arbitrary in requesting additional medical documentation once it received information concerning certain conditions suffered by the Claimant and medication he was taking. The CMO review of all medical information was conducted within 10 days of receipt, and the Claimant was released to return to service. Although some of the correspondence indicates that the Claimant was not returned until November 12, 2012, his job history and pay records reveal that he was returned to work on October 5, 2012, immediately after being cleared by the CMO. Under these circumstances, there is no basis for finding that the Carrier violated the Agreement by withholding the Claimant for an unreasonable period of time.

**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 29th day of March 2018.