

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43026
Docket No. MW-42489
18-3-NRAB-00003-140105**

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 removed and withheld Mr. C. Blockmon, Jr. from service beginning on July 7, 2012 and continuing through October 31, 2012 (System File UP317WF12/1580247 MPR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant C. Blockmon, Jr. shall ‘... be compensated for all hours at his respective straight time rate of pay and all hours at his respective overtime rate of pay, from July 7, 2012 to and including October 31, 2012, on account Union Pacific Railroad Company has unduly removed him from service, while working in Houston, Texas, on the Carrier property.”**

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 July 3, 2012 for medical evaluation based on his Manager's observations, phone communication between a nurse from the Carrier's Health and Medical Services Department (HMSD) and the Claimant, and his transport to a medical facility due to concerns for his health and well-being. The Claimant was directed to undergo a Second Opinion Fitness for Duty (FFD) exam and to provide medical documentation. The record contains progress notes from HMSD tracking the scheduling and results of the Claimant's FFD. They reveal concerns with abnormal EKG results, referral to a cardiologist, ECHO and stress testing with abnormal results, leading to follow up testing and appointments throughout the period of July through October. The Carrier's Chief Medical Officer (CMO) reviewed all of the medical records on October 26, 2012, and released the Claimant to return to work without restrictions. The Claimant was returned to work effective November 1, 2012.

The Organization asserts that there was no valid reason to withhold the Claimant from service, since he denies being unable to perform his job on July 3, 2012. It contends that his physician released him to return to work on August 9, 2012, and the Claimant should have been returned to work immediately thereafter. The Organization argues that the Carrier unreasonably delayed returning him without justification, requiring compensation for the excessive amount of time he remained out of service, citing Third Division Awards 40332 and 32328.

The Carrier argues that it has the recognized right to establish medical standards and that the supervisor properly applied Rule 2.5.b by medically withholding the Claimant from service and contacting HMSD after he observed his unsteady gait, profuse sweating and appearance that he was going to faint. Based upon the Claimant's conversation with the nurse, which is documented in his progress notes, he was taken for immediate medical attention. The Carrier maintains that receipt of test results raised concerns about the Claimant's health and ability to work, and supported its request for additional EKG, ECHO and

stress testing. It contends that, once it had all of the medical information, it mets its responsibility to act expeditiously in having the documents reviewed and returning the Claimant to service when he was medically released. The Carrier asserts that there is no basis for monetary relief for delay in this case, 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 supervisor's statement about the Claimant's symptoms provoked him to call HMSD for assistance, and, based upon Claimant's discussion with a nurse about his physical condition, he was removed from service and taken to a medical facility. The record supports a valid basis for the Claimant's removal from service and referral for a Second Opinion FFD evaluation. There was no showing that the Carrier delayed scheduling medical appointments, or acted arbitrarily in requesting additional testing and medical documentation once it received abnormal test results. The CMO review of all medical information was conducted within a reasonable period of time of receipt of all follow up testing, and the Claimant was released to return to service almost 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.