

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43163
Docket No. SG-43655
18-3-NRAB-00003-160423**

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad:

Claim on behalf of J.M. Fulbright, for reinstatement to his former positions with all seniority and benefits unimpaired, compensation for all time lost, including overtime, beginning on February 3, 2015, and continuing until this dispute is resolved, account Carrier violated the current Signalmen’s Agreement, particularly Rules 2 and 24, when it removed and withheld the Claimant from service without just cause. Carrier’s File No. 1630133. General Chairman’s File No. S-2 24-1466. BRS File Case No. 15328-UP.”

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.

The Organization filed the instant claim on the Claimant's behalf, alleging that the Carrier violated the parties' Agreement when it improperly withheld the Claimant from service on February 3, 2015, for medical conditions that previously had been approved by Carrier medical staff. The Carrier denied the claim.

The Organization contends that the instant claim should be sustained in its entirety because the Carrier improperly withheld the Claimant from service under a medical leave of absence even though it was aware that the Carrier's Health Services already had approved the Claimant's medications and fitness for duty, because the Carrier acted in an arbitrary and misguided manner and its decision was unreasonable, and because there is no support for the Carrier's position.

The Carrier contends that the instant claim should be denied in its entirety because the Carrier has the right to withhold an employee from service where there are medical concerns until the employee can be medically cleared to safely perform the duties of his or her position, and because the Organization has failed to meet its burden of proof.

The parties being unable to resolve their dispute, this matter came before the Board.

The Board has reviewed the record in this case, and we find that the Organization has failed to meet its burden of proof that the Carrier violated the Agreement when it removed the Claimant from service when he failed to answer a call on January 25, 2015, when he was on call. The Claimant did not contact the Carrier until 6:15 A.M. the next day, when he said that his sleep medication had been responsible for his not hearing the phone. The Claimant was placed on medical leave because of his medical issues. The Claimant was placed on permanent restrictions, including that he could not operate Carrier vehicles on track or mobile equipment, cranes, forklifts, hoists or other machinery. The Claimant was asked to participate in a sleep study and the Claimant refused.

The Carrier has a right to establish and implement medical standards for its employees. The Claimant's restrictions prohibited him from operating numerous pieces of equipment and, therefore, was unable to return to his position as an electronic technician. The Claimant worked in a safety sensitive position which

required him to be in good health. The Carrier has a right to establish its medical standards and remove employees in accordance with its rules.

Given the situation in this case, the Board cannot find that the Carrier acted in violation of the Agreement when it had a reasonable basis for concern over the Claimant's medical fitness.

Since the Organization has failed to meet its burden of proof in this case, the Board has no choice other than to deny the claim.

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 30th day of May 2018.