

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43377
Docket No. MW-42354
19-3-NRAB-00003-130361 (Old)
19-3-NRAB-00003-180452 (New)**

The Third Division consisted of the regular members and in addition Referee Paul Betts when the award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees Division–
(IBT Rail Conference
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(Union Pacific Railroad Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier improperly removed and withheld Mr. J. W. Lewis from a system truck driver position beginning on June 23, 2012 and continuing through July 10, 2012 (System File D-1226U-201/1575238).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. W. Lewis shall be allowed “*** compensation for all hours he was not allowed to work commencing June 23, 2012, including two (2) hours not paid for service on June 23rd, and hours of service missed on June 24th through 30th as well as July 9, 2012. This shall include all hours he would have been entitled, both straight time and overtime, had the violation not taken place.”**

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 Claimant worked as a System Brant Truck Driver. On June 23, 2012, the Claimant presented his supervisor with a note from his medical provider indicating the Claimant was not to bend nor lift more than ten pounds. Based upon the restriction, the supervisor removed the Claimant from service pending further medical evaluation.

The Claimant had a follow-up appointment with his medical provider on July 2, 2012. On July 3, 2012, the Claimant was medically “cleared with a temporary 50 lb. lifting occasionally bending/twisting restrictions” and could “return to full duty on 7/8/12.” The Claimant then exercised his seniority and returned to work on July 10, 2012.

Although the Board agrees with the Organization that the Claimant’s supervisor was lax in forwarding the Claimant information to the Carrier’s Health and Medical Services Department (HMS), a review of the medical records does not indicate that the lack of follow-up by the supervisor caused any significant delay in the Claimant’s return to full duty. HMS was in contact with the Claimant on June 25, 2012, just two days after the Claimant had presented his medical restriction to his supervisor. Furthermore, the Claimant’s medical provider did not clear him for full duty until July 8, 2012.

The Organization argues the Carrier could have accommodated the Claimant’s restriction rather than removing him from service. Although Rule 2.5 (b) allows for the accommodation of restrictions, it does not mandate such. In addition, a review of the medical records indicates the Claimant’s restrictions were increased during the review period before being removed altogether on July 8, 2012.

The Carrier is charged with ensuring the safety of its workforce and determining the fitness for duty of its employees. The Board’s role is to review the record to determine if the Carrier was arbitrary in its determination that the Claimant was unfit to perform his job. In the instant case, the Carrier’s action was reasonable and not arbitrary. Therefore, the claim is denied.

Although the Board may not have repeated every item of documentary evidence or all the arguments presented, we have considered all the relevant evidence and arguments presented in rendering this Award.

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 18th day of January 2019.