

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43378
Docket No. MW-42355
19-3-NRAB-00003-130362 (Old)
19-3-NRAB-00003-180453 (New)**

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

**(Brotherhood of Maintenance of Way Employees Division–
(IBT Rail Conference**

PARTIES TO DISPUTE: (
(Union 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. P. Silos from service without pay commencing on June 8, 2012 and continuing until July 26, 2012 (System File D-1250U-202/1574612).**
- (2) The claim* referenced in Part (1) above, as appealed on October 23, 2012, by former General Chairman W. Morrow to Mr. P. Jeyaram, Director Labor Relations, shall now be allowed as presented because the appeal was not disallowed in accordance with Rule 49.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimant P. Silos shall now be compensated ‘*** for all hours he was not allowed to work commencing June 8th, 2012 and continuing until he is returned to service. This shall include all hours he would have been entitled, both straight time and overtime, had the violation not taken place.’**

***The initial letter of claim will be reproduced within our initial submission.”**

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.

At the time of the incident, the Claimant worked as a Brandt Truck Operator. On April 13, 2012, Director of Track Maintenance witnessed the Claimant sleeping while on duty. Initially, the incident was to be handled via the disciplinary process, but upon investigation, the Claimant advised the Carrier that his physician had seen him on April 10, 2012, due to excessive daytime sleepiness. Foregoing disciplinary action, and on or about April 14, 2012, the Claimant was removed from service pending a medical evaluation.

Following the Claimant's removal from service and continuing through July 2012, there was significant medical testing as well as substantial communication between the Carrier's Health and Medical Services (HMS), the Claimant's personal physicians, and the Carrier's Employee Assistance Services regarding the Claimant's ability to return to work. Several sleep studies were performed. Medical records indicate the Claimant had severe obstructive sleep-disordered breathing, requiring the use of a CPAP. Several CPAP fittings were conducted throughout July 2012, and after HMS reviewed the associated medical records on July 23, 2012, noting the Claimant's sleep efficiency of ninety-five percent, the Claimant was released to return to work. The Claimant then returned to work on July 26, 2012.

It should be noted the Claimant remained on payroll until June 8, 2012. The record is unclear as to what, if any, light duty work the Claimant may have performed from April 14, 2012, until he was removed from payroll on June 8, 2012.

The Organization argues the Carrier violated Rule 49 of the Agreement. Although the Organization argues it did not receive the December 3, 2012 denial letter from the Carrier, evidence provided by the Carrier creates a presumption the letter was actually mailed.

As to the merits, the medical records are indicative of significant health issues the Claimant was experiencing regarding his daytime sleepiness. Given these health issues, the Claimant could not safely perform his duties as a truck operator.

Although the Organization argues that Dr. Lindley indicated the Claimant “should be fit for work” on May 7, 2012, the primary purpose of Dr. Lindley’s report had to do with liver function test results rather than the Claimant’s daytime sleepiness. A review of the record, and specifically the medical records, indicates the Carrier acted reasonably and responsibly in determining when the Claimant could return to work. The Carrier is charged with ensuring the safety of its workforce, and its actions here were not arbitrary, but rather appropriate and necessary. The claim is therefore 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.