

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43385  
Docket No. MW-42570  
19-3-NRAB-00003-140252**

**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 Claimant S. Groelle was withheld from service without just cause beginning on February 16, 2013 through March 1, 2013 (System File B-1350U-101/1583685).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant S. Groelle shall ‘... be compensated for twenty (20) hours of straight time, have twenty four (24) hours of vacation credited back to 2013 vacation allotment, and three (3) days of per diem payment made at the applicable rates of pay for the position and per diem based on his work schedule.’(Emphasis in original).”**

**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.**

On February 16, 2013, the Claimant was removed from service after Carrier supervision received a report from a local bar and grill that the Claimant had fallen asleep on two occasions at the establishment. Thereafter, supervision discussed the matter with the Claimant. During the discussion, the Claimant acknowledged a problem and indicated he had been seeking counseling for the issue but had recently discontinued said counseling. The Claimant agreed to seek assistance through the Carrier's Employee Assistance Program (EAP) but failed to make contact as instructed. As a result, the Claimant was removed from service pending an EAP evaluation. After meeting with the EAP, the Claimant was then released to return to service on February 27, 2013.

In summary, the Organization makes the following arguments:

- “1. The Claimant was not on-duty when he was observed sleeping at the bar and grill, and there is no report that the claimant was ever under the influence while working for the Carrier.
2. The record is void of any on-the-job safety issues requiring the removal from service. The record is also void of any medical evaluation of the Claimant justifying the removal from service.”

In summary, the Carrier makes the following arguments:

- “1. The Carrier has the right to withhold an employee from service when there are medical concerns until the employee can be medically cleared to perform their duties.
2. The Organization has not met its burden of proof in establishing a violation of the agreement.”

The facts leading to this claim are not in dispute. Here the Carrier received an unsolicited report regarding the Claimant's behavior. The Carrier investigated the report by discussing the matter with the Claimant. The Claimant admitted to a problem and advised the Carrier he had been seeking counseling for the issue but had discontinued that counseling. The Claimant agreed to contact the Carrier's EAP, but after failing to do so, the Carrier removed the Claimant from service pending an EAP evaluation. None of these facts are disputed.

Although the Claimant was observed sleeping at the bar and grill while off-duty and there is no evidence that the claimant was ever under the influence while on-duty,

these facts do not preclude the Carrier from investigating the matter. The Carrier's investigation into the report from the bar and grill was reasonable.

It is well-established the Carrier has the right to withhold employees from service for medical reasons. It is not for the Board to decide whether the Carrier was correct in its assessment of the Claimant's fitness-for-duty. The Board's role is to determine whether the Carrier was arbitrary or capricious in its determination that the Claimant was unfit during the period in dispute.

Given the undisputed facts detailed above, the Board cannot find that the Carrier was arbitrary or capricious in its determination to withhold the Claimant from service until the EAP properly assessed him.

Although the Board may not have repeated every item of documentary evidence or testimony, nor all the arguments presented, we have considered all the relevant evidence, testimony, 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.