

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 43432  
Docket No. SG-44243  
19-3-NRAB-00003-170308

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

**PARTIES TO DISPUTE:** ( (Brotherhood of Railroad Signalmen  
(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 M.C. Lange, for 334 hours at his straight-time rate of pay, 55.5 hours at his overtime rate of pay, 16 hours Holiday pay, and any expenses he incurred, account Carrier violated the current Signalmen's Agreement, particularly Rules 5, 53, and 65 when, it improperly withheld the Claimant from service and required him to attend medical examinations without compensating him for lost time and expenses from October 15, 2015, until December 15, 2015. Carrier's File No. 1650676. General Chairman's File No. S-5, 53, 65-1545. BRS File Case No. 15541-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 Claimant works as a Skilled Signalman for the Carrier, and on September 29, 2015, the Claimant experienced a loss of consciousness (LOC) while at work. Immediately following the event, the Claimant was taken to the hospital to be evaluated by a doctor and was cleared to return to work. The following day, September 30, 2015, the Claimant was required by the Carrier to be evaluated by his personal doctor, who also cleared the Claimant to return to work. On October 1, 2015, the Claimant reported for a Department of Transportation (DOT) recertification physical for his Commercial Driver's License (CDL). The DOT examiner, upon gaining knowledge of the recent LOC event, was not able to recertify the Claimant for operation of commercial vehicles over 10,000 pounds. The DOT examiner also requested that the Claimant have neurology and cardiology examinations before being recertified for his CDL. The Claimant worked October 5-8 and October 12-14, 2015. On October 14, 2015, the Claimant was removed from service by the Carrier pending the results of the cardiology and neurology examinations requested by the DOT. The requested evaluations were completed on November 19 and 23, 2015, resulting in a diagnosis of Vasovagal Syncope. There was also a second neurology appointment for the Claimant on December 8, 2015. The Claimant was then cleared to return to work by the Carrier on December 14, 2015, and returned to service on December 15, 2015.

The Organization argues a) the Claimant had been cleared to return to work by two doctors immediately following the LOC incident of September 29, 2015, and was allowed by the Carrier to return to service on October 1, 2015, b) the Carrier allowed the Claimant to continue working through October 14, 2015, at which time the Carrier removed the Claimant from service without any additional medical issues arising warranting the removal, and c) the Claimant is entitled to lost earnings under Rule 65.

The Carrier argues a) the Carrier has the managerial right to withhold an employee for medical reasons to determine the employee's fitness for duty and has an obligation to ensure that its employees are safe to work in their assigned positions, b) the removal of the Claimant from service was justified, aligned with arbitral precedent, and was compliant with the Collective Bargaining Agreement, c) the Claimant is not entitled to compensation for the time period he was rightfully withheld from service, d) the Organization failed to satisfy its burden of proof obligation, and e) the Carrier's decision to remove the Claimant from service pending evaluation under the circumstances was not arbitrary, capricious, or in bad faith.

As indicated above, the Claimant had a LOC event on September 29, 2015 and was removed from service on October 14, 2015. The record is unclear as to why the Claimant was allowed to work on October 5-8 and October 12-14, 2015.

On October 14, 2015, the Carrier's Health and Medical Services (HMS) department cleared the Claimant for work but with a sudden incapacitation restriction, which the Carrier did not accommodate. In addition, HMS was waiting for the cardiology and neurology workup reports that were scheduled for November 19 and 23, 2015, before making a final determination regarding the Claimant's medical status. On November 24, 2015, the Claimant contacted HMS, advising HMS he was scheduled for a second neurology appointment on December 8, 2015. The Claimant sent HMS his cardiology and neurological clinical notes/tests results to the Carrier on December 10, 2015. The Carrier also received a carotid doppler report on December 14, 2015. After receiving said notes/test results, HMS contacted the Claimant on December 14, 2015, explaining he was medically cleared but not DOT certified, and that he would require a new exam for DOT certification.

As the Board has said on many occasions, the Carrier has the right and responsibility to set proper and reasonable medical standards for its workforce. It is not the function of the Board to substitute its judgment for that of the Carrier's regarding medical determinations or the medical standards upon which it bases its decisions. That being said, the Carrier must have a rational basis for its determination and must make such determinations based upon a reasonable standard.

Although vasovagal syncope may be a common medical condition as the Organization maintains, the sudden loss of consciousness in the workplace is nonetheless a serious medical event. Based upon a review of the medical records, the Board finds the Carrier's decision to initially withhold the Claimant from service rational and not arbitrary. Furthermore, the Board finds the decision by HMS to wait on the cardiology and neurology reports before making a final determination as to the Claimant's medical status rational and not arbitrary. The Carrier received cardiology and/or neurology reports for the Claimant on November 24, December 10, and December 14, 2015. After receiving the reports, the Carrier promptly advised the Claimant he was released for work on December 14, 2015. Because the Carrier's actions were rational and not arbitrary, the claim must be denied.

Although the Board may not have repeated every item of documentary evidence, nor 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 1st day of March 2019.