

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43442  
Docket No. SG-44380  
19-3-NRAB-00003-170520**

The Third Division consisted of the regular members and in addition Referee Paul Betts when the 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 R.V. Tucker, for compensation for all time lost, including overtime, from February 1, 2016, until he is returned to service account Carrier violated the current Signalmen's Agreement, particularly Rule 65, when, it improperly withheld the Claimant from service and required him to attend additional medical examinations after his physician and Carrier's physician released him to return to work on February 1, 2016. Carrier's File No. 1654593. General Chairman's File No. UPGCW-65-0319. BRS File Case No. 15652-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.**

In the instant claim, the Organization alleges the Carrier arbitrarily delayed the Claimant's return to service after requiring him to attend additional medical evaluations despite being released to return to service by both his personal and Carrier physicians.

At the time of this dispute, the Claimant was assigned as a Signal Maintainer. On September 19, 2015, the Claimant suffered an off-duty injury to his hand, requiring several surgeries. A review of the Carrier's Health and Medical Services (HMS) medical notations reveals the following:

**" September 23, 2015**

The Claimant was placed on a medical leave of absence (MLOA).

**February 1, 2016**

The Carrier's Health and Medical Services (HMS) Department received a return-to-work release form from the Claimant's personal physician. In addition, HMS physician Charbonneau released the employee for duty based upon the release form provided by the Claimant's hand surgeon.

**February 3, 2016**

The case was reopened by HMS because the Claimant's manager had concerns with the Claimant's ability to perform his job safely. HMS contacted the Claimant, indicating he was not to return to work until he had an Occupational Medical Exam (OME). The OME was scheduled for February 9, 2016.

**February 9, 2016**

OME completed.

**February 10, 2016**

HMS received the OME report, which cleared the Claimant to return to work. However, HMS required and requested more detail regarding the OME report.

**February 18, 2016**

The requested OME detail was received by HMS. After receiving the detailed OME report, HMS forwarded the report to the Carrier's Chief Medical Officer (CMO) and Director of Clinical Services (DCS).

**February 19, 2016**

The Carrier CMO and DCS reviewed the OME detail and ordered a functional field evaluation (FFE) for the Claimant.

**March 24, 2016**

FFE scheduled for April 11, 2016.

**April 11, 2016**

FFE completed and Claimant was cleared to return to work.

**April 13, 2016**

Claimant returned to work."

The Organization argues the Carrier caused an unreasonable delay in returning the Claimant to work. The Claimant was initially cleared to return to work by both his personal physician and the Carrier's physician on February 1, 2016. The Carrier then required the Claimant to undergo additional examinations, thereby prolonging the Claimant's return to service.

The Carrier argues a) the Organization failed to present a specific rule violation that would then trigger a Rule 65 violation, b) it was proper for the Carrier to ensure the Claimant was fit for duty and safe in performing his assigned duties, and c) the Organization failed to satisfy its burden of proof obligation.

As the Board has said on many occasions, the Carrier has the right and responsibility to set reasonable medical standards, to request and review medical documents, and to require medical examinations to ensure fitness for duty and safe performance of work. However, as noted in Third Division Awards 37578 and 40839, the Carrier has an obligation to perform its medical review and determination within a reasonable time period.

**In the instant case, it was reasonable for the Carrier to reopen the case on February 3, 2013, and to require the Claimant undergo an OME. It was also reasonable for the Carrier to insist on receiving additional detail from the provider who performed the OME. On February 19, 2016, after receiving and reviewing the additional detail regarding the OME, it was reasonable for the Carrier to require the Claimant undergo a functional field evaluation. The FFE was performed on April 11, 2016. The Carrier was solely responsible for scheduling the FFE, and there was no reasonable evidence provided in the record as to why it took the Carrier 49 days to schedule the evaluation. As such, the Board concludes the 49 days it took the Carrier to schedule the FFE was excessive and unreasonable.**

**Medical records indicate the CMO and DCS reviewed the OME detail and ordered the FFE on February 19, 2016. The Board concludes that it would have been reasonable for the Carrier to have scheduled the FFE within five calendar days and reasonable to return the Claimant to work within two days of successfully completing the FFE. As a result, the Board will sustain the claim in part and direct the Carrier to compensate the Claimant for all lost wages beginning February 26, 2016 and continuing through April 12, 2016.**

**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 sustained in accordance with the Findings.**

**ORDER**

**This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.**

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**By Order of Third Division**

**Dated at Chicago, Illinois, this 1st day of March 2019.**