

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43451
Docket No. MW-44317
19-3-NRAB-00003-170396**

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when the award was rendered.

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

PARTIES TO DISPUTE: (
(Iowa Interstate Railroad

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed and refused to allow Machine Operator B. Chalupa to return to service following his release from a medical leave of absence beginning on March 7, 2016 and continuing (System File IIR2 IIS).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant B. Chalupa shall be returned to service and he shall be compensated at the applicable straight time and overtime rates of pay for all days improperly withheld from service beginning on March 7, 2016 and continuing.”**

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 Organization filed the instant claim on behalf of the Claimant, alleging that the Carrier violated the parties' Agreement when, beginning on March 7, 2016, and continuing, it refused to allow the Claimant to return to duty as a machine operator from medical leave on the asserted ground that Carrier's automobile insurer would not cover the Claimant. The Carrier denied the claim.

The Organization contends that the instant claim should be sustained in its entirety because the Carrier's purported qualification was not valid in that the Claimant's machine operator position does not require the operation of vehicles, because the Carrier's requirement was arbitrary and unreasonable, because the Carrier failed to produce evidence of uninsurability with its insurance provider and of total uninsurability, and because the Claimant had proof of insurability during the relevant time period. The Carrier contends that the instant claim should be denied in its entirety because it is not properly before this Board in that it was filed eighty-four days after the Claimant was notified that he was not being allowed to return to service because he did not possess a valid driver's license and was not insurable under the Carrier's auto liability policy, because the Organization acquiesced to the Carrier's policy of requiring valid driver's licenses, because this Carrier policy includes being insurable under the Carrier's auto liability policy, because the Organization acquiesced in the application of this policy to the Claimant, because the Claimant did not meet the requirements of his employment when the Carrier's insurance provider refused to insure the Claimant, because there is no merit to the Organization's arguments, because a machine operator may be required to operate a Carrier vehicle, and because the Organization failed to show that the Carrier violated the Agreement.

The parties being unable to resolve their dispute, this matter came before this Board.

The Board has reviewed the record in this case, and we find that the Organization has failed to meet its burden of proof that the Claimant's rights were violated when the Carrier refused to allow him to return to service following his release from a medical leave of absence on March 7, 2016. The Carrier states that the reason it refused to put him back to work after he returned to work was that he did not meet the Carrier's job requirements for the machine operator job. The Carrier's job requirements set forth

in the job description require that the employees assigned as machine operators must possess and maintain a valid driver's license and they must be insurable under the Carrier's commercial auto liability insurance policy. The Claimant was not insurable under the Carrier's commercial auto liability insurance policy. It is true that the Claimant went out and bought his own automobile insurance, but that does not meet the requirements of the Carrier. In other words, the Claimant's personal insurance does not protect the Carrier. The Carrier has a legitimate reason for requiring that the employees be insurable under the Carrier's insurance policy because if there is anything that occurs while the Claimant is at work, the Carrier would be liable.

With respect to the driver's license, although the Organization argues that there is no need for a machine operator to operate a motor vehicle, the Carrier has shown that in the case of its machine operators, they sometimes have to drive to obtain parts for their machines.

The Board finds that the Carrier's job requirements as set forth in its handbook are legitimate, and the Claimant simply failed to meet those job requirements. Consequently, the Board has no choice other than to deny this claim.

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.