

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43587
Docket No. MW-42447
19-3-NRAB-00003-180474
NRAB-00003-140054**

The Third Division consisted of the regular members and in addition Referee Jacalyn J. Zimmerman when award was rendered.

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

PARTIES TO DISPUTE: (

**(Union Pacific Railroad Company (former Chicago
and North Western Transportation Company)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier removed and withheld Mr. B. Mason from his assigned welder position beginning on August 8, 2012 through October 29, 2012 and continuing (System File G-1227C-51/1578237 CNW).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant B. Mason shall ‘*** be compensated for all the days and hours worked both straight time and overtime by Gang 2982 between August 8, 2012 and October 1, 2012, and all days worked by Gang 2982 going forward until such time Claimant Mason is returned to service, at the applicable rates of pay.’**

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.

This matter concerns the Carrier's decision to withhold the Claimant from service due to an alleged concern that he suffered from a medical condition which impacted his ability to safely perform his duties. On August 8, 2012, while assigned as a welder on Gang 2982, he fainted while completing a weld. His manager, Louis Lager, gave a statement concerning the matter to the Carrier's Health and Medical Services Department, which initiated the Fitness for Duty evaluation process.

The Claimant contacted the Carrier the next day and acknowledged that he had felt ill and contacted his doctor, who wanted him to have lab work done the following Saturday. On August 14, 2012, the Claimant's physician informed the Carrier that the Claimant might have been suffering from heat stress but it was necessary for the Claimant to undergo a second-opinion workup. The Carrier states that it did not have all information required to make an accurate assessment of the Claimant's condition until October 15, 2012. The Carrier returned him to service on October 29, 2012.

The Organization contends that the Claimant's personal physician diagnosed him with dehydration and heat exhaustion on August 8, 2012, an exceptionally hot day. The Organization maintains that another physician came to the same conclusion and released him to return to work on August 29, 2012. The Organization contends that the Carrier unreasonably subjected the Claimant to extensive, unnecessary and irrelevant testing which denied him his right to return to work in a timely manner. The Organization states that the 60-day evaluation period here was completely excessive. The Organization contends that the Claimant is due compensation for the time he was withheld from service.

As discussed in Third Division Award 41393, see also Third Division Award 42762, it is well established that the Carrier may withhold an employee from work pending medical determination of his fitness for duty. We agree with the Carrier that the Claimant exhibited symptoms which warranted a medical assessment of his condition. However, the record supports the conclusion that the length of time the Carrier took to evaluate the situation, and to return the Claimant to work once it was apparent that there was no impediment to his doing so, was excessive. We therefore order the Carrier to make the Claimant whole for 30 days.

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 27th day of March 2019.