

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43863
Docket No. SG-44609
20-3-NRAB-00003-180026**

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 R.C. Fegler, for return to service with compensation for all lost time, including overtime and with benefits unimpaired from July 7, 2016, continuing until he is returned to service, account Carrier violated the current Signalmen’s Agreement, particularly Rules 52 and 65, when on July 7, 2016, it improperly withheld the Claimant from service and then failed to schedule a medical re-examination after he properly requested said re-examination. Carrier's File No. 1670661. General Chairman's File No. EF8 19sep2016 MWA03. BRS File Case No. 15729-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 was hired in September 2010. In the year prior to being hired by the Carrier, the Claimant suffered a seizure. Based upon the prior seizure, the Carrier placed a medical restriction on the Claimant, barring him from operating Carrier vehicles for a seven-year period from the date of the seizure.

In June 2016, the Claimant contacted the Carrier's Health and Medical Services (HMS) department to see if his medical restriction could be lifted. Shortly thereafter, Dr. Charbonneau reviewed the Claimant's file. FMCSA (Federal Motor Carrier Safety Administration) regulations regarding the Claimant's medical condition had changed since the initial review of the Claimant's case in 2010. Based upon a current review of the Claimant's file and the new FMCSA guidelines regarding the Claimant's medical condition, HMS issued the following medical restrictions to the Claimant, which could not be accommodated by the Claimant's supervision:

- “...1. Operation of cranes hoists, or machinery – Prohibited.
- 2. Work on or near moving trains, freight cars, or locomotives – Prohibited.
- 3. Work at unprotected heights over 4 feet above the work surface – Prohibited.
- 4. Work on 1-man or 2-man gangs – Prohibited.
- 5. Restrictions can be reviewed in August 2020...”

Because the restrictions could not be accommodated, the Claimant was removed from service on July 7, 2016. The Organization then requested the Claimant be returned to service and requested a re-examination under Rule 52, which states in relevant part:

“RULE 52 – PHYSICAL EXAMINATIONS

A. Physical Disqualification

An employee subject to the Agreement between the parties hereto who is disqualified as a result of an examination conducted under the Carrier's rules governing physical or mental examinations will be notified in writing, with copy to his General Chairman of his disqualification and will be carried on leave of absence.

B. Requesting Re-Examination

If the employee feels his condition does not justify removal from the service or restriction of his rights to service, he may request re-examination. Such request must be submitted by him or his representative within thirty (30) days following notice of the disqualification, unless extended by mutual agreement between the General Chairman and Labor Relations. He may be given further examination as follows:

1. The employee will be re-examined by a physician designated by the Carrier and a physician of the employee's choice who will both be graduates of a Class (A) medical school of regular medicine. If the two physicians agree that the man is disqualified, their decision is final; if they agree the man is qualified, he will be returned to service..."

The Organization argues a) the Carrier improperly withheld the Claimant from service by imposing medical restrictions that were not supported by any medical evidence and by imposing the restrictions without actually examining the Claimant, and b) the Carrier failed to grant the Claimant a re-examination under Rule 52.

The Carrier argues a) the Organization failed to set forth any probative evidence to refute the Carrier's medical determination, b) the Organization failed to provide the Carrier with the name of the Claimant's designated physician under Rule 52, and failed to provide the Carrier with any medical notes from any Claimant designated physician, c) the record demonstrates the Claimant's condition warranted the imposed medical restrictions, and d) there is no dispute regarding the Claimant's medical condition. The Organization provided no evidence to refute the Claimant's medical history or prove the medical restrictions were arbitrary or capricious.

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.

After a thorough review of the record, the Board finds the new medical restrictions issued to the Claimant to be reasonable and not arbitrary. The new restrictions were based upon a review of the Claimant's medical file in line with changes under FMCSA regulations and how those regulations relate to the Claimant's medical condition.

As to Rule 52, the record is void any information as to the Claimant's designated physician; there is nothing in the record indicating the name of the Claimant's designated physician and there is nothing in the record indicating medical notes were received by the Carrier from the Claimant's designated physician. Simply put, there is no evidence in the record indicating the Claimant was ever re-examined by a physician of his choice under Rule 52. The record also reveals that after the Organization requested re-examination under Rule 52, Carrier Physician Holland reviewed the Claimant's medical file and concurred with the medical restrictions assigned by Dr. Charbonneau.

Given these facts, the Board finds the Carrier's action and medical determination here to be reasonable and not arbitrary. As a result, 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 28th day of January 2020.