

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 43866  
Docket No. SG-44826  
20-3-NRAB-00003-180264

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 T.A. Lubash, for compensation for all lost time, including overtime and Holiday pay that his Gang received from November 22, 2016, through November 29, 2016, account Carrier violated the current Signalmen’s Agreement, particularly Rule 49, when it improperly withheld the Claimant from service for more than a reasonable amount of time during a review of his medical release documents, causing him a loss of work opportunity. Carrier's File No. 1677901. General Chairman's File No. N 0065. BRS File Case No. 15775-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.

At the time of incident, the Claimant worked as a Skilled Signalman. On July 13, 2016, the Claimant was granted a Medical Leave of Absence (MLOA) for a hip replacement. On November 14, 2016, the Claimant's treating physician faxed the Carrier's Health and Medical Services (HMS) department documentation releasing the Claimant to work, with no restrictions, effective November 15, 2016. The Carrier acknowledges receiving the release to return to work (RTW), but asserts they were not provided required clinical notes until December 5, 2016. On December 6, 2016, the Claimant was notified by HMS that he was medically cleared and released to full duty.

The Organization argues the Carrier was provided the same documents regarding the Claimant's medical condition on three different occasions, November 14, November 18, and December 2, 2016, yet the Claimant was not notified of being medically cleared by the Carrier until December 6, 2016.

The Carrier argues a) the Carrier did not receive all required medical information concerning the Claimant's RTW until December 5, 2016. The Claimant was then promptly notified on December 6, 2016 that he was released for full duty, b) the Carrier did not create any undue delay in returning the Claimant to service, and c) the Organization failed to satisfy its burden.

After a careful review of the record, the Board finds the Organization failed to meet its burden. Although the specific medical documentation HMS received on 12/5/16 was not part of the record here, the fact that new information was requested, and then ultimately received on 12/5/16, is supported by notation in the HMS medical comments history for the Claimant. As such, 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.**

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**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.**