

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43867
Docket No. SG-44866
20-3-NRAB-00003-180334**

The Third Division consisted of the regular members and in addition Referee Paul Betts when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(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 N. Ryals, for 28 days (224 hours) compensation at the Skill Interlocking Repairman rate of pay, as well as any overtime he would have been entitled to, account Carrier violated the current Signalmen’s Agreement, particularly Rules 5, 52, 53, and 65, when, from January 11, 2017, until February 17, 2017, it improperly withheld the Claimant from service and then failed to schedule a fitness for duty examination in a timely manner, causing him a loss of work opportunity. Carrier's File No. 1682380. General Chairman's File No. S-5, 52, 53, 65-17. BRS File Case No. 15762-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 was working as a Skilled Interlocking Repairman. The instant dispute developed when, on January 10, 2017, the Organization alleged the Carrier arbitrarily delayed the Claimant's return to service after he was cleared without restrictions to return to work by his personal physician effective January 11, 2017, but was not cleared to return to service by the Carrier until February 17, 2017.

In summary, the Organization argues a) the Claimant's personal physician cleared the Claimant to return to work with no restrictions effective January 11, 2017, b) Manager Burkhardt notified the Claimant on January 10, 2017 that he was being withheld from service pending a Fitness for Duty (FFD) examination, c) it was not until January 27, 2017 that the Claimant received notification by letter of his temporary removal from service, d) it was not until February 7, 2017 that the Claimant had his FFD examination, and e) it was not until February 17, 2017 that the Claimant was cleared to work by the Carrier.

In summary, the Carrier argues a) the Claimant was not improperly withheld from service and his return to work was not unduly delayed, b) the Organization failed to meet its burden of proof obligation, c) Manager Burkhardt did not refer the Claimant for a FFD evaluation until January 23, 2017, d) the Claimant was uncooperative in providing necessary medical records to HMS concerning his return to work and e) the record reveals inconsistencies in the Claimant's reporting of his medical condition.

Central to the resolution of this matter is the actual date the Claimant was notified by Manager Burkhardt of being pulled from service pending the FFD exam. Here, the Organization argues the Claimant was notified by Manager Burkhardt of being pulled from service on January 10, 2017, while the Carrier argues the Claimant was on vacation from January 11, 2017 – January 19, 2017, and was not pulled from service until January 23, 2017. The Organization supplied a statement from the Claimant supporting its position, while HMS medical comments dated January 24, 2017 support the Carrier's position. On this point, the Board is left with a genuine dispute of fact. Above and beyond the dispute of fact noted above, a review of the medical records revealed inconsistencies between how the Claimant reported prior medical issues compared to current reporting. Furthermore, medical records revealed an unwillingness by the Claimant to fully cooperate with HMS in accessing required medical documentation.

The Board has held on numerous occasions that where there is a genuine dispute of facts, it falls to the moving party to provide sufficient evidence to convince the Board

of its version of events. Given the above, the evidence provided by the Organization failed to convince the Board that the Carrier arbitrarily delayed the Claimant's return to service. As such, the Board has no choice but to dismiss the claim.

Although the Board may not have repeated every item of documentary evidence or all the arguments presented, we have considered all the relevant evidence and arguments presented in rendering this Award.

AWARD

Claim dismissed.

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.