

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43911
Docket No. MW-45180
20-3-NRAB-00003-180712**

The Third Division consisted of the regular members and in addition Referee Kathryn A. VanDagens when award was rendered.

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

PARTIES TO DISPUTE: (

**(National Railroad Passenger Corporation (AMTRAK)
(- Northeast Corridor**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier medically withheld Mr. P. Silis from service on March 24, 25, 26 and 27, 2017 without fully compensating him for his losses (Carrier's File NEC-BMWE-SD-5608 AMT).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant P. Silis shall be compensated for thirty-five (35) hours at the time and one-half rate of pay of an EWE A.”**

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 established and holds seniority within the Carrier's Maintenance of Way Department. On March 21, 2017, the Claimant was operating a front-end loader in the performance of his duties when he accidentally struck a guy wire (a tensioned cable used to stabilize a utility pole). Immediately following the incident, the Claimant was directed to take a "for cause" Drug and Alcohol (D&A) test. The Claimant was withheld from service pending the results of the D&A test. On March 30, 2017, the Claimant was returned to service after a negative D&A test. Thereafter, the Claimant was compensated for all straight time hours worked by his crew during the period he was out of service.

The Organization filed a claim on May 20, 2017, seeking compensation for the overtime hours that his crew worked while he was held out of service. The Carrier denied the claim and the parties were unable to resolve it on property. Thus, the claim is properly before this Board for final adjudication.

The Organization contends that pursuant to Rule 69, the Claimant was entitled to be paid for the straight time and the overtime hours that his crew worked while he was withheld from service by the Carrier's unilateral decision. The Organization contends that when the Carrier withholds an employee from service as medically disqualified, it should bear the "risk of fallibility" when the D&A test was negative and it is clear that the Claimant was at all times medically qualified to perform service.

The Carrier contends that Rule 69 only applies to employees who are held out of service pending a trial and decision, and the Claimant was withheld pending the results of a drug and alcohol test. Therefore, the Carrier contends that Rule 69 did not apply here. The Carrier contends that even if Rule 69 were to apply, the Claimant was medically disqualified while waiting for the results of the D&A test, so he was not entitled to further compensation.

The Board has reviewed the record in this matter and finds that Rule 69, which provides for overtime compensation, does not apply to this case. See, Third Division Award No. 43069. The Claimant was withheld pending the results of a D&A test after an accident. He was not withheld from service pending a trial and decision.

The Awards cited by the Organization finding that the Carrier bears the Risk of Fallibility when it withholds an employee pending a medical evaluation and no basis is found for having withheld the employee, do not require a different result. The Claimant was temporarily medically disqualified while awaiting the results of his D&A test.

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.