

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43947
Docket No. MW-44696
20-3-NRAB-00003-180209**

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

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

PARTIES TO DISPUTE: (
(CSX Transportation, Inc.

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it improperly withheld Mr. L. Sandow from service beginning on March 8, 2016 and continuing (System File Sandow C.116/2016-205294 CSX).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant L. Sandow shall now ‘... be compensated all lost wages, benefits, and credits for the claimed dates listed on page 1 of this instant claim.’”**

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 last reported for work on March 17, 2004 after suffering an on-duty injury. In March of 2016, the Claimant attempted to return to work and was withheld from service. The Carrier advised the Claimant to undergo a Functional Capacity Exam to determine if he was fit for duty on March 8, 2016. The Chief Medical Officer determined that the Claimant did not have the physical capacity to perform the duties of a truck laborer and referred the Claimant to the Vocational Rehabilitation Department for further evaluation on April 4, 2016. The Vocational Rehabilitation Manager determined that the Claimant failed to demonstrate that he was able to perform the tasks of his job.

By letter dated May 5, 2016, the Organization submitted a claim on behalf of the Claimant alleging that Carrier wrongfully withheld the Claimant from service, and did not allow him to return to work. The Carrier denied the Claim. The formal conference was conducted on October 16, 2016 with no change in positions. The claim was advanced, and is before this Board for adjudication.

The Organization contends that the Carrier violated the Agreement when the Carrier removed the Claimant from service on March 8, 2016 in violation of Rule 27. The Organization argues that the Carrier's supervisor was neither a doctor nor possessed any medical training to remove the Claimant from service. In addition, the Organization argues that there were no statements from a Carrier doctor who examined the Claimant who found that the supervisor's alleged observations were sufficient to remove an employee. The Organization asserts that the Claimant's personal physician found that he was fully fit to return to service without restriction, treatment or otherwise. The Organization maintains that the Carrier's decision to remove and withhold the Claimant was baseless, unreasonable and a violation of the Agreement. Further the Organization contends that the Carrier failed to comply with Rule 27 and fill out documents related to insurance and disability or sickness benefits. The Organization argues that it is the responsibility of the Carrier to fill out all forms needed for insurance, disability or sickness if an employee is removed or withhold from services based on an alleged physical condition. Lastly, the Organization opines that it has met its burden of proof, and the claim should be sustained.

The Carrier contends that the Organization failed to show that the Carrier violated any rules or agreements. The Carrier asserts that an employer has the right to withhold an employee from services if it determines the employee is not able to physically perform his job duties. The Carrier argues that the Claimant had not worked since March 17, 2004 after suffering an on-duty injury. When the Claimant attempted to return to work following an on-duty injury approximately 12 years later, he was

directed to undergo examination to determine his fitness for duty. The Carrier also contends that the company complied with Rule 27 when the Claimant was provided with the MD3 form to have completed by his physician and sent to CSX Medical Department for review. The Carrier claims that its decision was not arbitrary or capricious. The Carrier maintains there was no violation of the agreement, and the claim should be dismissed.

Applicable Agreement Provisions

The pertinent provisions governing this dispute in the Agreement Between CSX Transportation, Inc. And Its Maintenance of Way Employees Represented by the Brotherhood of Maintenance of Way Employees (hereinafter, "Agreement") effective June 1, 1999 are Rule 1, Rule 3, Rule 4, Rule 5, Rule 10, Rule 17, Rule 22, Rule 24(i), Rule 25 and Rule 27. These rules are incorporated herein as if fully rewritten.

The Board has carefully reviewed the record. It is not disputed that the Claimant was returning to work following a work-related injury which occurred twelve years prior. It is well settled that the Carrier is vested with the right to determine an employee's ability to function in various positions and safely perform workplace responsibilities. After consideration of the facts presented herein the Board cannot find that the Carrier's actions were arbitrary and capricious. The Board finds that the Organization has not met its burden of proof.

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 5th day of March 2020.