

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43955
Docket No. MW-43078
20-3-NRAB-00003-190388**

The Third Division consisted of the regular members and in addition Referee Patricia T. Bittel when award was rendered.

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

PARTIES TO DISPUTE: (
(BNSF Railway Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated with Mr. C. Allen was unreasonably withheld from service beginning on January 11, 2014 and continuing until February 25, 2014 following his being cleared by his personal physician to return to duty on January 11, 2014 (System File C-14-P018-8/10-14-0171 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant C. Allen shall ‘...be paid for all straight time hours, overtime hours, and Holiday pay at the appropriate rate of pay for everyday that the Claimant was improperly withheld from service beginning on January 11, 2014 and ending on February 26, 2014 when the Claimant was finally allowed to return to work. I am also requesting that the Claimant be given credit for all days for which qualifying days are required, such as vacation qualifying days, as well as, any benefits lost during this time frame, as settlement of this 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 went on medical leave in 2013. On January 10, 2014, he was examined by his personal physician, Dr. Benavides, who determined that he could return to service without medical restriction effective January 11, 2013. On January 10, 2013, the Claimant provided the Carrier's Medical Department, via fax, with his completed medical release forms. The Carrier contacted the Claimant on January 10, 2013 and requested additional information. The Claimant provided the additional information on January 17. On January 21, 2013, the Carrier contacted the Claimant and informed him that he would be required to submit to further medical evaluations (DOT physical and drug test) before he could be released to service. The Carrier scheduled the DOT physical and drug examination on February 10, and the Claimant was allowed to return to service on February 26, 2014.

The Organization alleges the Carrier improperly withheld the Claimant from service in violation of the parties' Agreement. It cites the following provisions in pertinent part:

“RULE 1. SCOPE

- A. These rules govern the hours of service, rates of pay and working conditions of all employees not above the rank of track inspector, track supervisor and foreman, in the Maintenance of Way and Structures Department, including employees in the former GN and SP&S roadway equipment repair shops and welding employees. * *

RULE 2. SENIORITY RIGHTS AND SUB-DEPARTMENT LIMITS

- A. Rights accruing to employees under their seniority entitles them to consideration for positions in accordance with their relative length of service with the Company, as hereinafter provided.

RULE 15. LEAVE OF ABSENCE

- D.** An employee granted an indefinite leave of absence in excess of fifteen (15) calendar days, desiring to return to will not less than seventy-two (72) hours' advance notice. An employee granted a definite leave of absence desiring to return to service prior to the expiration of such leave of absence, will give not less than seventy-two (72) hours' advance notice. * * *

RULE 29. OVERTIME

- A.** Except as otherwise provided in this Agreement, time worked preceding or following and continuous with a regularly assigned eight (8) hour work period shall be computed on actual minute basis and paid for at time and one-half rate, with double time computed on actual minute basis after sixteen (16) continuous hours of work in any twenty-four (24) hour period computed from starting time of employee's regular shift."

The Organization maintains the delay in the Claimant's return to service was unjustifiable and baseless. In its defense, the Carrier asserts that required documents were not received until January 17, 2014. After reviewing medical information and determining that the Claimant was fit for duty, BNSF contacted him on January 21, 2014. Since the Claimant had been on leave for longer than six months, a CHS exam was scheduled along with required drug screen. The Claimant Allen was DOT certified and did not want to place himself on a non-DOT job and lose his bump. Hence, the CHS exam and drug screen were pre-requisites to his return to work. The Carrier concludes that the Claimant was returned to service in a timely manner.

We do not find any contract violation in this case. The Claimant initiated delay when his January 10 submission lacked essential documentation. He could have returned earlier had he not insisted on a DOT position, hence additional delay was also due to his actions. It was not unreasonable for the Carrier to outsource testing or to make the CHS exam and drug screen pre-requisite to his return. Though there was a delay after the testing was performed, we do not find that it was unreasonable.

AWARD

Claim denied.

Form 1
Page 4

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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 day of 2020.