

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44065
Docket No. MW-43336
20-3-NRAB-00003-190579**

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

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

PARTIES TO DISPUTE:

(Union Pacific Railroad Company (former Missouri Pacific)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier removed and withheld Mr. D. Renfro from his assigned trackman position on Gang 9112 beginning on September 3, 2014 and continuing through October 8, 2014 (System File UP962PA14/1614950 MPR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant D. Renfro shall be compensated ‘*** one hundred and seventy six (176) hours at the respective straight time rate and any overtime that his gang might have worked during this period in which he was removed from service along with his expense allowances and per/diem for each day. ***”**

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.

In the instant dispute, the Organization alleges the Carrier violated the Agreement when it withheld the Claimant from service without a justifiable reason.

By letter dated September 3, 2014, the Claimant was temporarily removed from service pending a supervisor-requested fitness for duty (FFD) evaluation. Carrier Health and Medical Services (HMS) records indicate the Claimant's referral was related to observations of confusion, erratic behavior, and threats against co-workers.

In summary, the Organization argues a) the Carrier arbitrarily withheld the Claimant from service September 3, 2014 – October 8, 2014, b) the Carrier's defenses to the claim are without substance or merit, and c) the requested remedy is both proper and appropriate.

In summary, the Carrier argues a) the removal of the Claimant from service pending a fitness for duty evaluation was proper under the Agreement, and b) the Organization has not satisfied its burden of proof.

The Board has said on many occasions that the Carrier is charged with ensuring the safety of its workforce and has the right and responsibility to set proper and reasonable medical standards for its workforce. It is not the function of the Board to substitute its judgment for that of the Carrier's regarding medical determinations or the medical standards upon which it bases its decisions. That being said, the Carrier must have a rational basis for its determination and must make such determinations based upon a reasonable standard and in a timely fashion.

After a thorough review of the record, the Board cannot find the Carrier arbitrary in its decision to withhold the Claimant from service pending the FFD evaluation. The record reveals that the Claimant made threatening remarks about co-workers he suspected of vandalizing his truck. Carrier medical records indicate the Claimant was assessed by Carrier physician Hughes on September 5, 2014, whereby physician Hughes ordered a psychological evaluation of the Claimant. The Carrier received Dr. Garlock's psychological evaluation report on October 1, 2014. After receiving the psychological evaluation, Carrier EAP spoke with the Claimant's primary care physician on October 3, 2014. On October 5, 2014, the Claimant was released to

return-to-work without limitations but with a recommendation that he work with the EAP regarding training programs focused on interpersonal relationships, conflict resolution, anger and frustration management, and communication skills improvement with managers and supervisors. The Claimant then returned to work at the beginning of his T2 compressed work schedule on October 8, 2014. Here, the Carrier's actions were rational and were not arbitrary. 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.

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 11th day of August 2020.