

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44068
Docket No. MW-43404
20-3-NRAB-00003-190582**

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

**(Brotherhood of Maintenance of Way Employees 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 unnecessarily and unjustly removed and withheld Mr. J. Branch from service beginning on November 13, 2014 through December 1, 2014 (System File UP673BT14/1618450 MPR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. Branch ‘... shall be paid eighty (80) hours of straight time for lost work time due to being required to submit to an EAP evaluation and for three hundred (300) round trip miles at the IRS rate of fifty-six (56) cents per mile for miles driven to St. Louis, Missouri, where the evaluation was conducted. This claim is also for nine hundred twenty (920) miles round trip mileage per rule 37; travel allowance.’”**

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 claim, the Organization alleges the Carrier violated the Agreement when it unnecessarily and unjustly removed and withheld the Claimant from service beginning on November 13, 2014 through December 1, 2014.

On the evening of November 7, 2014, at approximately 9:00 PM, the Claimant left his hotel room in Dolton, IL for an evening meal at a restaurant next door. When the Claimant failed to return to his hotel room that evening, his roommate contacted the Safety Captain to report the Claimant's absence. The Carrier thereafter conducted a search for the Claimant, contacting area police departments and hospitals. The next morning, at approximately 10:30 AM, the Claimant was found approximately 10 miles away, in Lynwood, IL. The Claimant was not injured but could not recall any events of the prior evening.

Based upon the incident, the Claimant was removed from service on November 13, 2014 (while on a rest day), pending an Employee Assistance Program (EAP) evaluation. The Claimant was placed on a Medical Leave of Absence on November 16, 2014, evaluated by the EAP on November 18, 2014, and released by the EAP on November 19, 2014. The Claimant then returned to work on December 1, 2014.

In summary, the Organization argues a) the Carrier improperly withheld the Claimant from service pending an EAP evaluation, b) the Carrier delayed returning the Claimant to service, and c) the requested remedy is proper and appropriate.

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

After a thorough review of the record and given the facts noted above, the Board finds that the Carrier did not act improperly in withholding the Claimant from service pending an EAP evaluation. Furthermore, there is no evidence in the record of any undue delay in returning the Claimant to service. As a result, 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.