

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 44233
Docket No. MW-43517
20-3-NRAB-00003-200453

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

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

PARTIES TO DISPUTE: (

(BNSF Railway Company (Former Burlington Northern
(Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier improperly removed and withheld Mr. J. Johnson from his regularly assigned Bridge and Building (B&B) 1st Class Mechanic/Carpenter position beginning on November 20, 2014 and continuing until his return to work on December 8, 2014 (System File C-15-P018-1/10-15-0078 BNR).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. Johnson shall be compensated ' ... for all straight time hours and overtime hours worked by Bridge and Building Gang BBCX0533 between November 24, 2014 and December 7, 2014, as well as, his Thanksgiving Holiday pay at the 1st Class Mechanic/Carpenter rate of pay for everyday that the Claimant was improperly withheld from service beginning on November 20, 2014 and continuing until he was cleared to return to work on December 8, 2014. 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 additional 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.

On November 20, 2014, the Claimant was observed by Supervisor Jason Hale and Manager Ed Ferguson having difficulty maintaining balance and exhibiting unusual effort to walk. He was placed on a medical leave of absence until November 26. He scheduled an appointment with his doctor on November 20 and the appointment took place November 26. the Claimant admitted experiencing fatigue on November 19 and November 20, 2014. He further admitted that his doctor he advised him to get insoles and do stretches to combat a case of Plantar Fasciitis. He was returned to work on December 8.

The crux of the Organization's argument is that the Carrier never provided any specific information or medical documentation that would justify the Claimant's removal from service. However, the Claimant admitted to having Plantar Fasciitis and needing insoles and stretches. Admittedly, it is unusual to place an employe on medical leave without medical documentation of a diagnosis. The information from the Claimant's doctor's appointment on November 26 should have been provided to the Organization.

BNSF maintains it has a broad right to determine the physical fitness of its employes and the authority to withhold employees from service until deemed physically qualified to work. It cites multiple cases as precedent to support this contention. For example, Third Division Award 28506 held as follows:

“It is well established that a Carrier has the right, upon reasonable cause, to subject an employee to appropriate medical evaluation to determine his fitness to perform the duties of his position in a safe and

responsible manner. It has also been held that the Carrier may, in proper circumstances, withhold the employee from service pending the results of such evaluations.”

And as the Board held in Third Division Award 32197, “This Board has consistently held that a Carrier's determination of an employee's physical ability to work will be upheld unless it is found to be unreasonable or arbitrary.”

We find that the Carrier had adequate reason to place the Claimant on medical leave. The observations of the Claimant's difficulty on the job, coupled with the information he provided regarding his condition, are adequate to meet the Carrier's burden. The Board can find no obligation on the part of the Carrier, contractual or otherwise, which has been breached.

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 23rd day of October 2020.