

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44234
Docket No. MW-43604
20-3-NRAB-00003-200454**

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 (Former Burlington Northern
(Railroad Company)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it improperly withheld Claimant D. Anderson from service beginning on December 11, 2014 and continuing (System File C-15-P018-5/10-15-0127 CSX).**
- (2) As a consequence of the violation referred to in Part (1) above, we request that Claimant D. Anderson be compensated for all straight time and overtime hours and any holiday pay at his appropriate rate of pay for each day the Claimant was improperly withheld from service.”**

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's supervisor P. Farley was notified by DriveCam of an incident where the Claimant did not stop quickly enough. He reviewed other videos of the Claimant's driving and became concerned that the Claimant was either having trouble seeing what was ahead of him or reacting reasonably quickly to it.

Farley contacted Eileen Warner, BNSF's Manager Field Medical Environmental Health, and also initiated the disciplinary process; he withheld the Claimant from service at end of shift on December 10, 2014, pending a medical evaluation. The Claimant then sought medical attention from his family physician. The Claimant's physician suggested that the Claimant might be suffering from sleep apnea and scheduled a test to be administered on December 19, 2014. The test results apparently confirmed that the Claimant was in fact suffering from sleep apnea. No discipline was assessed as a result of the February 3, 2015 disciplinary hearing. The Carrier stayed in contact with the Claimant, who delayed his return to work.

In the Organization's view, the Claimant's medical issue was addressed and the results were given to Nurse Warner on January 22, 2015. The Claimant handled the matter in a prompt and concerned fashion, and should have been released to full duty on January 23, 2015 following the Carrier's receipt of his medical clearance. However, it alleges the Carrier arbitrarily withheld the Claimant from duty until he was finally released by the Carrier's Medical Department on February 23, 2015.

The Carrier asserts the Claimant was fit tested for his respirator on January 15, and seven days after that were needed to test the equipment. It states it received his list of medications on January 29, which included a fentanyl patch and pain medication. It discussed his return with him on February 6 and again on February 10. He was cleared to return to duty on February 11 but took another 12 days before returning. The Carrier contends it should not be faulted for this.

We do not find adequate evidence that the Claimant was unreasonably withheld from service after his medical release. The record shows continuing equipment assessment and medical evaluation, in addition to delay which has been attributed exclusively to the Claimant. The Organization has not effectively rebutted the Carrier's assertion that the Claimant was cleared to return to work on February 11 and chose not to do so until February 23.

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.