

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44328
Docket No. 43021
15-3-NRAB-00003-150461
20-3-NRAB-00003-190609**

The Third Division consisted of the regular members and in addition Referee Erica Tener when award was rendered.

**(BROTHERHOOD OF MAINTENANCE OF WAY
(EMPLOYES DIVISION – IBT RAIL CONFERENCE
PARTIES TO DISPUTE: (
(UNION PACIFIC RAILROAD COMPANY (former
Southern Pacific Western Lines)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier removed and withheld Mr. R. Robinson from service beginning on May 5, 2014 and continuing (System File RC-1432S-601/1608154 SPW).**
- (2) As a consequence of the above-stated violation, Claimant R. Robinson shall ‘... be compensated for all the hours denied, both straight time and overtime, since being abruptly pulled from service on May 5, 2014, without just cause or explanation, until he is returned to full duty. Payment shall be in addition to any compensation he may have already received.”**

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.

R. Robinson (Claimant) established and holds a seniority date of May 29, 1998. At all times relevant to this dispute the Claimant was assigned to Gang 8402 as a track inspector, headquartered at Los Nietos, California.

The following facts are undisputed. The Claimant was on a medical leave of absence beginning February 11, 2014 for an emergency surgery. He was cleared to return to full duty with no restrictions by his personal physician effective May 1, 2014. The Claimant reported for work on May 5, 2014. He was then removed from service by the Carrier that same day citing a need to complete additional testing. On May 7, 2014, the Claimant's supervisor completed a Manager Referral for a Fitness for Duty Request Form expressing concerns that the Claimant was having "difficulty climbing", "fatigue/weakness" and "deteriorating performance." On May 8, 2014, the Claimant completed an exercise treadmill test and was then referred for a Functional Capacity Exam which took place on May 20, 2014. The Claimant was then referred by the Carrier for additional fitness for duty (FFD) tests before he could be cleared to return to service. The Carrier also instructed the Claimant on several occasions to provide additional documentation.

On June 17, 2014, the Organization filed a claim on the Claimant's behalf claiming he was unreasonably being withheld from service. The parties were unable to resolve the matter after processing it in the normal and customary manner on property. This dispute is now properly before this Board for final adjudication.

The Organization does not dispute that the Carrier has the right, upon reasonable cause, to require employees to undergo physical examinations. However, the Organization argues, the record in this case does not contain a medical basis for keeping the Claimant out of service after May 5, 2014. The Organization contends the Carrier attempted to justify its actions after the fact when the Claimant's direct supervisor, Molina, completed the formal request for an FFD evaluation, two days after the Claimant was removed from service.

The Organization also maintains the Claimant complied with all testing requests made by the Carrier and yet, was kept out of service even after being cleared a second time by his personal physician on August 15, 2014.

The Board has carefully reviewed the on-property record established for this dispute as well as awards cited by the parties in support of their respective positions. As has been previously held in many awards involving these same parties, the Carrier has a duty and responsibility to ensure all its employees are medically able to perform all job functions. It has also been held that the Carrier may remove an employee from service under a medical disqualification if the Carrier has reason to believe the employee may jeopardize his health or safety or that of his co-workers. It is clear from the record before us the Claimant's direct supervisor observed him having physical difficulties on his first day back to work following a medical leave of absence for emergency surgery. Although it took Molina two days to document his concerns, it is reasonable to conclude he communicated his concerns to his supervisors as soon as he saw them. Based on that communication the Carrier had cause for concern and the right to remove the Claimant from service until he could complete further examination.

At the Claimant's request, the Carrier participated in an interactive process through its Accommodations department to help the Claimant find an alternate position. These attempts to find an alternate position, although ultimately unsuccessful, are further evidence the Carrier was acting reasonably and responsibly.

The burden of proof lies with the Organization to establish the Carrier violated the Agreement when it withheld the Claimant from service beginning on May 5, 2014. The Organization has not provided specific Agreement language to support its position the Carrier is prohibited from removing the Claimant from service until a determination can be made that he can perform his duties safely.

For all reasons stated above, the Board must deny this claim in its entirety.

AWARD

Claim denied.

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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 6th day of January 2021.