

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44333  
Docket No. 44158  
17-3-NRAB-00003-170204  
20-3-NRAB-00003-190622**

**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 Carrier violated the Agreement when it removed and withheld Mr. W. Jimenez from service beginning on August 24, 2015 through November 4, 2015 (System File T-1532S-901/1640573 SPW).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant W. Jimenez shall be allowed “\*\*\* compensation for all hours he was not allowed to work commencing from the August 25, 2015 and continuing until he is returned to service, because the Carrier made a unilateral decision to suspend him without pay. This amount shall include all hours Claimant would have been entitled to work, both straight time and overtime, had the violation not taken place.”**

**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.

W. Jimenez (Claimant) established and holds seniority within the Carrier's Maintenance of Way Department and works as a welder. The Claimant has had several Medical Leaves of Absence (MLOA) related to his shoulder. He has also had at least one surgery on his shoulder. He returned to full duty from his last MLOA on June 31, 2015. On August 24, 2015 the Claimant informed his supervisor (Andrew Gonzalez) that his welding duties caused him pain in his shoulder and asked if he could perform light duty or be relived of some of his duties to allow his shoulder to improve. Gonzalez asked that the Claimant be withheld from service pending a fitness for duty evaluation.

The Organization filed the instant claim on October 22, 2015 asserting the Carrier violated the Agreement when it unreasonably removed the Claimant from service and failed to provide him with the reason for his removal in writing. 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 argues Rule 32 of the Agreement contains unambiguous language. It provides:

**Rule 32 – Physical Examinations**

- (a) HELD OUT OF SERVICE DUE TO PHYSICAL DISQUALIFICATION** – An employee removed from service by the Company due to physical conditions will be advised in writing at the time of such action. In such cases the Company may require the employee to submit to physical examination prior to returning to work. (emphasis added)

Based on this clear language, the Organization argues, the Carrier must provide in writing, its reason(s) for withholding him from service. The Organization contends the Carrier had no basis to withhold the Claimant from service in the first place. Nor did was there any basis to keep him off duty for an additional two months.

The Carrier argues it was the Claimant who said he was in pain and unable to perform all of the duties of his position. Based on Gonzalez's knowledge that the Claimant had issues with his shoulder, he thought it prudent to remove him from service pending a fitness for duty evaluation. The Carrier's Health and Medical Services (HMS) Department kept in contact with the Claimant and requested additional medical documentation. The Claimant was again placed on MLOA status between August 24, 2015 and October 12, 2015. The Carrier returned the Claimant to duty one day after it received all of the necessary medical clearances.

The Carrier acknowledges it did not provide the written notice but argues that failure does not warrant a sustaining award from the Board. The purpose of the notice, the Carrier asserts, is to provide the Claimant with the reason for his removal from service and the process for his return. Based on the Claimant's multiple MLOA's, the Carrier argues he was familiar with the process he needed to follow to return. The Claimant was also fully aware of the reasons for his removal from service. It was he who brought up the pain in his shoulder. The Carrier points out that there is no provision in the Agreement that entitles him to light or restricted duty. The Carrier was simply conducting its due diligence to ensure the Claimant was able to perform his job safely and without risk of re-injury to his shoulder.

The Board has reviewed the on-property record. There is no dispute the Carrier had the right to remove the Claimant from service based on its concerns over his ability to perform his duties safely. Nor is there any question that it was the Claimant who first mentioned his work was causing pain. Once he made that assertion, the Carrier had an obligation to follow up and remove him from service pending a fitness for duty evaluation. The Board does not find that the Claimant's removal from service was unreasonable. Nor do we find that he was unreasonably kept out of service. Both parties acknowledge the Claimant needed the time to strengthen his shoulder so he could return to full duty.

What remains is the Carrier's failure to provide the written notice as required by Rule 32. The language is clear and unambiguous, and the Carrier failed to provide the notice. The parties agree the notice requirement serves to inform the employee being removed from service with the reasons for his removal. The Board is forced to again point out that it was the Claimant who told the Carrier that he didn't feel as though he could perform his duties without pain or causing further injury. The notice would have only served to reiterate what he already knew. Given that the Claimant has been on multiple MLOAs, he already knows the process he is required to follow to return to work.

The Board therefore finds that the Carrier's failure to provide written notice does not warrant a sustaining award in this matter and denies the claim in its entirety.

**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 6th day of January 2021.