

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44471
Docket No. MW-44538
21-3-NRAB-00003-170707**

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division
(IBT Rail Conference**

PARTIES TO DISPUTE: (

(Union Pacific Railroad Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier, commencing on April 1, 2016 and continuing, improperly removed and withheld Mr. D. Otis from service (System File G-1627U-301/1660829 UPS).**
- (2) As a consequence of the violations referred to in Part (1) above, the Carrier shall compensate Claimant D. Otis “*** for all the days and hours worked both straight time and overtime by Gang 8546 between April 1, 2006 and April 15, 2016, as well as credited for all days which he would have accrued towards his 2017 vacation and all days worked by Gang 8546 going forward until such time Claimant Otis is returned to service, at applicable rates of pay.***”**

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 was working as a Rubber Tire Backhoe Operator, also performing track laborer functions when necessary. This claim protests Carrier's action in removing the Claimant from service after he complained to his Foreman about his knee pain and asked to go home to rest his knees on March 27, 2016. The Claimant's Manager requested a FFD exam (based on his observations and this complaint) on March 28, and on March 29 the Claimant was offered a MLOA to see his doctor and be placed on appropriate restrictions, which he declined. Medical examinations were conducted on April 4 and 6, and the records indicate that the Claimant had osteoarthritis in his knees, and required severe work restrictions including no walking or standing for over 15 minutes, no climbing, no walking on uneven surfaces or working near moving trains, and height restrictions. A FCE was commenced on April 13 but could not be completed due to the Claimant's elevated blood pressure. The doctors recommended that the Claimant be restricted to sedentary work, and it was determined that his work restrictions could not be accommodated within his work group. The Claimant was referred to the accommodation group on May 3 to see if there was a position that could accommodate his restrictions. The record reflects that the Claimant informed his doctors that he intended to retire that summer. It appears he did so on July 1, 2016.

The Organization argues that Carrier had no reasonable basis to withhold the Claimant from service on April 1 after he had been cleared by three doctors to return to work. It asserts that Carrier arbitrarily pulled the Claimant from service initially and continued to withhold him without cause, and requests compensation for the period until he retired.

Carrier contends that it has the well-recognized right to withhold employees from service for medical reasons, and that such determination should not be overturned except if found to be made in bad faith or to have been arbitrary or capricious, relying on PLB 6302, Award 8. It maintains that it acted reasonably by requesting a FCE after a doctor visit, since the Claimant complained of knee pain, and his very heavy and labor intensive job raised safety concerns. Carrier stresses that the Claimant was offered a MLOA to see his doctor and get appropriate medical restrictions, but he declined, extending the process of trying to ascertain what work he could safely perform. It argues that it acted reasonably in assessing the Claimant's

medical condition and attempting to get him back to work in a safe environment, and there has been no showing of undue delay or arbitrary action.

A careful review of the record convinces the Board that the Organization has failed to sustain its burden of establishing a violation of the Agreement in this case. Carrier's action in initially removing the Claimant from service pending a medical evaluation was neither arbitrary nor unreasonable, since he clearly suffered from a knee condition that severely restricted his ability to perform his job safely. The record indicates that Carrier moved the process along as expeditiously as possible, and kept the Claimant apprised of what it was requesting and why, as well as the results of such examinations. Under these circumstances, there is no basis upon which the Agreement provides the Claimant with the entitlement to the compensation requested. Accordingly, the Board has no basis for sustaining the claim as presented.

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 10th day of June 2021.