

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44472  
Docket No. MW-44641  
21-3-NRAB-00003-180090**

**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 Carrier violated the Agreement when it improperly removed and withheld Mr. C. Pace from service beginning on August 22, 2016 and continuing (System File MK-1650U-602/1672958 UPS).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant C. Pace shall now ‘\*\*\* be allowed compensation for all hours he was not allowed to work commencing August 22, 2016 and continuing until he is returned to service. This shall include all hours he would have been entitled, 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.

This claim protests the Claimant's removal from service as a Track Welding Foreman on August 24, 2016, based upon his own report to his Manager that if he stops moving he passes out, and the reports of co-workers that the Claimant was falling asleep at work which raised safety concerns. His Manager referred the Claimant for medical evaluation. Since the Claimant was a CDL driver, it was decided that he need to be sent for a sleep study, which occurred on September 14 and 15. Carrier's HMSD received the results on September 22, indicating that the tests were normal and the Claimant could return to work "as long as he doesn't fall asleep." Carrier decided that this note required clarification, and eventually received a confirmation that the Claimant's condition had changed as a result of medication prescribed to him, and he was released to return to full duty on October 4, 2016.

The Organization argues that the Claimant was removed from service without cause, since there was no evidence provided that he could not safely perform his duties. It asserts that since he was released to return to work and eventually found fit without restriction, the Carrier must bear the burden of compensating him for the time lost between his removal from service and when he was returned on October 10, 2016, citing Third Division Award 44070 among others.

Carrier contends that the Claimant was properly removed from service based upon his own admission and the complaints from his co-workers about his falling asleep on the job. It argues that Carrier 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. Carrier maintains that, once the sleep study was administered and the results forwarded to Carrier, upon medical review the Claimant was released to return to work, and he did so.

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 withholding the Claimant from service was done in compliance with the procedures set forth in HMSD Rule 2.5(b), and its decision to do so was rationally based. See, Third Division Award 29818. In accord with Carrier's responsibility to assure the safety of its employees, the medical assessment the Claimant was required to undergo was reasonable, and we can find no excessive delay in the Claimant's return to service after the results were obtained and reviewed. See, e.g. Third Division Award 28505.

**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 10<sup>th</sup> day of June 2021.