

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44473
Docket No. MW-44643
21-3-NRAB-00003-180098**

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 withheld Mr. C. Williams from his position beginning on August 6, 2016 through September 1, 2016 (System File RI-1650U-801/1670659 UPS).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant C. Williams shall now “***be allowed compensation for all hours he was not allowed to work commencing August 6, 2016 to August 31, 2016. This shall include all hours he would have been entitled, both straight time and overtime, and per diem 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 on August 6, 2016, based upon his own statement to his Manager that he could not do warm-up exercises with his hard hat on, and his Manager's observation that he was working slowly allegedly due to prior heat stress he had suffered. His Manager referred the Claimant for a FFD examination. HMSD reviewed the statements of the Claimant and his Manager and referred the Claimant to an Occupational Medical doctor. The appointment was held on August 16, and the Claimant was cleared to return to full duties on August 18, was notified of such, and told to call his Manager. The Claimant did not do so until August 31, 2016 when he called his Manager and told him he could not afford to travel to the work site on September 1. He returned to work on September 2, 2016.

The Organization argues that the Claimant was withheld from service without justification or cause. It asserts that since he was released to return to work and 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 returned on September 2, 2016, citing Third Division Award 44070 among others.

Carrier contends that the Claimant was properly removed from service based upon his own statement about his limitations and his Manager's observations. 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 the Claimant was scheduled for an appointment promptly and was released to return to work within 2 days after the results were known. It stresses that any delay in the Claimant's return to work between when he was notified of his release to do so, and when he eventually contacted his Manager and reported on September 2, 2016, was solely the result of the Claimant's own actions in delaying responding and reporting, and was not attributable to any Carrier delay, relying on Third Division Award 41393.

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 response to his statement and his Manager's observations questioning his ability to safely perform his job, and 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 relatively prompt, and any delay in his returning to full duties was not attributable to Carrier. See, e.g, Third Division Award 41393; 42762. The Organization has shown no basis in the Agreement for ordering compensation in this case.

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.