

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44474
Docket No. MW-44713
21-3-NRAB-00003-180208**

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. I. Ramos from service beginning on September 12, 2016 and continuing through October 13, 2016 (System File B-1650U-201/1674890 UPS).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant I. Ramos shall now be allowed ‘... All lost hours at the straight time rate of pay and any and all hours of overtime compensation that would have been worked and earned by Claimant had he not been removed from his assigned position. Payment is to be made at the applicable rate of pay for the position as well as any loss of round trip travel allowance from work to Claimants (sic) residence and back to work.’”**

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 compressed halves as a System Rail Heat Treat Operator on Gang 9001. This claim protests Carrier's action in removing the Claimant from service after he suffered a coughing attack at work on September 12, 2016 requiring a visit to the Emergency Room (E/R), leading to a Manager's referral for a FFD exam. Due to the findings, the Claimant was informed that he needed additional documentation. His September 30 pulmonary specialist appointment was cancelled and, with the assistance of Carrier, an appointment with a different physician was made for October 4. The results of that exam were received by Carrier on October 11 and revealed that the Claimant has chronic sinusitis, and was placed on an inhaler and steroid treatment. Carrier also discovered that the Claimant had a different health condition that he never reported, and he was placed on monitoring for health issues and was returned to work on October 13, 2016.

The Organization argues that Carrier had no reasonable basis to withhold the Claimant from service merely because his cough required an E/R visit. It points out that the Claimant was eventually released to work with no restrictions, which shows that withholding him from service was unnecessary. The Organization believes that the Claimant should be compensated under Rule 50 for the time he was improperly withheld from service.

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 9; Third Division Award 31317. It maintains that it acted reasonably by requesting a follow up medical examination based on the note received from the Claimant's E/R visit indicating a chronic health condition requiring treatment, and assessing the Claimant's medical condition based upon his specialist examination. Carrier asserts that since there has been no showing of undue delay or arbitrary action, there is no basis for compensation for the short time the Claimant was withheld from service.

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 specialist

evaluation was neither arbitrary nor unreasonable, since he clearly suffered from a chronic condition affecting his breathing requiring an E/R visit during working hours, and his medical report showed ongoing medication treatment for that, and a previously undisclosed condition. The Claimant was immediately returned to service after the medical assessment released him to return to work, with no undue delay. Under these circumstances, there is the Agreement does not provide Claimant with any 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.