

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 44477
Docket No. MW-43389
21-3-NRAB-00003-200732

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 improperly withheld Mr. G. Carrillo from service beginning on September 22, 2014 and continuing and refused to establish a Medical Board of physicians as required by Rule 50 following a proper request by the Organization (System File M-1450U-402/1615718 UPS).
- (2) As a consequence of the violation referred to in Part (1) above, Carrier shall promptly establish a Medical Board to examine Mr. Carrillo and he shall “***be allowed compensation for all hours he was not allowed to work commencing September 22, 2014 and continuing until he is returned to service.***”

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 Carrier's failure to return the Claimant to service between September 22 and October 24, 2014. The Claimant was a Section Foreman on Gang 6143 when he went out on a MLOA for elbow surgery on June 11, 2014. After receiving and reviewing various medical information submitted to enable him to return to work with restrictions, he was granted temporary productive work (TRW) on August 1, while awaiting additional medical records. On September 23 the Claimant went to the Emergency Room (E/R) with check pains, and a cardiologist appointment was scheduled. Reviewing the medical records submitted thereafter, Carrier learned of other issues and medication that needed to be further explored before he could be considered fit to return to work. The Claimant eventually attended EAP, as instructed earlier in October, and Carrier's HMSD was notified by EAP on October 24 that no formal program was required, but medical follow up was suggested. The Claimant was returned to work after receipt of this information.

The Organization argues that the Claimant was cleared to return to work from his MLOA on September 22, 2014, but was improperly withheld from service for an additional month. It asserts that the Claimant should receive compensation under Rule 50 for the period between September 22 and October 24 when he was returned to work.

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 moved the process of review of the Claimant's medical fitness to return to work along expeditiously, and immediately brought him back when informed that he did not need additional formal EAP or medical intervention to safely perform his job duties. Carrier argues that the Organization failed to meet its burden of proving a violation of the Agreement since it acted in good faith and reasonably, and was neither arbitrary nor capricious in evaluating the Claimant's fitness for duty, and that its decision should be upheld by the Board, citing PLB 6302, Awards 9, 18 and 145; Third Division Awards 39940 and 42978.

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 reviewing medical records after the Claimant's E/R visit, and

following up on information it learned that could impact on the Claimant's ability to safely perform his job, was neither arbitrary nor unreasonable, and was in compliance with its responsibility for the safety of its employees. See, e.g. PLB 6302, Awards 8, 9 and 18. The record does not contain evidence that the Claimant was medically fit to return to duty prior to when he was returned on October 24, 2014. We can find no excessive delay in the Claimant's return to service in this case, nor any validly initiated Rule 50 request. 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.