

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 44516  
Docket No. 44693  
21-3-NRAB-00003-180130

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 (former Missouri Pacific)

**STATEMENT OF CLAIM:**

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier, commencing on September 26, 2016 and continuing, improperly removed and withheld Mr. W. Davis from service (System File UP945PA16/1675461 MPR).
- (2) As a consequence of the violation referred to in Part (1) above, the Carrier shall compensate Claimant W. Davis for all hours starting September 26, 2016 and continuing until he is reinstated to his former position.”

**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 continuing to withhold the Claimant, a Trackman, from service and not returning him to work after receipt of a full medical release from his doctor effective October 10, 2016, as well as the imposition of extensive work restrictions and the determination that they could not be accommodated by his department. The record establishes that the Claimant went out on a MLOA commencing February 29, 2016 for coronary artery disease and congestive heart failure necessitating open heart surgery, which occurred on March 3, 2016, and during which an Implantable Cardiac Defibrillator (ICD) was placed in his chest. Carrier's medical rules require employees that have experienced a reportable health event - which includes invasive cardiovascular procedures - to undergo a FFD evaluation by Carrier's Health and Medical Services department (HMSD). Carrier requested manufacturer guidelines regarding the ICD to evaluate the Claimant's ability to return to work, and conducted an extensive review of his medical records and those guidelines. The FFD process resulted in the October 25, 2016 issuance of permanent medical restrictions involving both his ability to operate machinery and work near moving trains, at heights over 4 feet and on 1 or 2 man crews, as well as sudden incapacitation restrictions due to the potential for EMF exposure with his permanent ICD which include maintaining certain minimum distances to specified pieces of equipment. On November 9, 2016 the Engineering Department concluded that it could not accommodate those restrictions, and the Claimant was so advised. He was referred to Vocational Services and his MLOA was extended. On November 18, 2016 his doctor supplied a supplemental statement releasing him to return to work without restrictions as of October 10, 2016.

The Organization asserts that the Claimant was cleared to return to work on full duty without restriction by his personal physician as of October 10, 2016, noting that he was the only practitioner to actually perform a competent medical evaluation of the Claimant since he was never seen or examined by a HMSD doctor. It argues that there was no rational basis for the extensive medical restrictions placed on the Claimant, which resulted in disqualifying him from his job, and that Carrier has the burden to establish an employee's physical disqualification if contested, and failed to meet that burden, citing Third Division Awards 25186 and 26056; Second Division Award 12193.

Carrier contends that it has the right and obligation to ensure that employees are safe to perform work by enforcing reasonable workplace restrictions, citing PLB 6302, Award 9; Third Division Awards 28505 and 31317. It maintains that Carrier

demonstrated the necessity for narrowly-tailored workplace restrictions in this case, and properly engaged in a FFD review of the extensive medical information and that provided by the manufacturer of the ICD. Carrier asserts that its decision to impose the restrictions was neither arbitrary nor unreasonable, and that it is HMSD that makes the final determination on all medical issues, not an employee's personal physician. It argues that the Organization has failed to meet its burden of establishing a violation of the Agreement, relying on PLB 5942, Award 41.

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. The facts reveal that the Claimant has a serious cardiac condition that required surgery and the implantation of a device to assure that his heart rhythms are properly monitored and any issues corrected. From reviewing the extensive Medical Comments History, there can be no doubt that Carrier's HMSD medical professionals considered all pertinent information, both medical and ICD product specifications, before concluding that he required permanent work and sudden incapacitation restrictions, and tailoring them to his job requirements. The Board has long held that as long as such decisions are rationally based, and neither arbitrary nor unreasonable, they should not be interfered with by the Board, or second guessed. See, e.g. PLB 6302, Award 8; PLB 5666, Award 207; PLB 7270, Award 7; Third Division Award 25013. Therefore, the Organization has shown no basis in the Agreement for ordering compensation in this case. See, e.g. PLB 6302, Award 9; Third Division Awards 41127, 25013.

**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 29<sup>th</sup> day of July 2021.