

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44519
Docket No. MW-45541
21-3-NRAB-00003-190331**

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 improperly withheld Mr. C. Martinez from service, beginning February 9, 2018 and continuing until March 5, 2018, in violation of the Agreement (System File RC-1850U-701/1704790 UPS).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant C. Martinez shall now be compensated for all lost wages, benefits and seniority rights from February 9, 2018 and continuing until March 5, 2018.” ”**

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 being withheld from service and not permitted to return to work from a MLOA between February 9 and March 5, 2018, and is based upon the Organization's reliance on a generic medical note from the Claimant's personal physician who saw the Claimant on January 12, 2018 and indicated that he could return to work on February 9. The Claimant's medical comments history maintained by Carrier's Health and Medical Services Department (HMSD) reveals that he requested a MLOA from Employee Health Services (EHS) on January 29, 2018, and was asked to provide paperwork in support of it. He was seen by EHS on January 30, and was informed that he would have to go through the FFD process upon returning to work, including the provision of medical records. It appears that his MLOA was extended on February 9, and he was again asked to provide medical records to support his return to work. The Claimant's personal physician's note referred to above was provided to Carrier on February 9. The medical comments history reveals that there were discussions with the Claimant about providing medical records and two request letters sent, specifying that what was needed for review were his hospital discharge summary and clinical notes following his hospital stay between January 12 and 16, 2018. These were received by HMSD on February 25. In the January 30 clinical note there was a return to work release indicating that the Claimant would receive another week of antibiotics and then could probably return to work in a week or two. No specific date of return was mentioned. He was informed on March 4 of this fact and was cleared to return to work on March 5, 2018.

The Organization argues that the Claimant was improperly withheld from service after he was released to return to work by his personal physician on February 9, and that Carrier's delay in returning him until March 5 was unsupported. The Organization contends that the Carrier must bear the burden of compensating him for the time lost between his release to return to work on February 9 and the actual date he was permitted to work on March 5, citing Third Division Award 44070 among others.

Carrier contends that the Claimant was properly withheld from service during the pendency of his record review by HMSD, and that any delay was caused by the Claimant's failure to timely furnish repeatedly requested medical information, and the lack of clarity of the terms and duration of his return to work release. 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 asserts that it acted promptly once it was in receipt of the Claimant's medical records, and the terms and duration of his release were clarified.

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 after he sought to return to work from his MLOA was rationally based, since he was a System Truck Driver who was hospitalized for lower leg extremity cellulitis and was being treated with antibiotics and pain medication. See, Third Division Award 39940. In accord with Carrier's responsibility to assure the safety of its employees, and in compliance with its established procedures on return to work from a MLOA, a review of the Claimant's medical records was reasonable and performed relatively promptly after receipt of the requested information and verification on the time parameters of his medical release. See, Third Division Award 41127. There is no evidence that the Claimant's failure to be returned to work prior to March 5 was attributable to any unexplained delay on Carrier's part. Therefore, 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 29th day of July 2021.