

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44521
Docket No. MW-45661
21-3-NRAB-00003-190594**

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. B. Campbell from service between May 5, 2018 and June 12, 2018 without pay and without justification or cause. (System File MK-1850U-603/1708259 UPS).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant B. Campbell must be allowed compensation for all straight time and overtime hours he was not allowed to work between May 5, 2018 and June 12, 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 Carrier's delay in returning the Claimant to service from a MLOA taken in December, 2017 for hip surgery. The Claimant was a Section Foreman, and his medical records revealed that he was taking tramadol, which is a restricted medication that prevents a safety sensitive employee to return to working in the field. The record contains a medical release form signed by the Claimant's doctor on April 26, 2018, indicating that he was released to return to full duties on May 5, 2018. That note states that the Claimant's Rx is concluded, that he had no restrictions, and that he was currently on no medication. The Organization asserted that the Claimant sent this note in to Carrier on May 3. Carrier submitted the Claimant's Medical Comments History record, which shows an entry on April 11, indicating that his return to work date was changed to May 5 and no medical records were received. There are no other entries until June 1, 2018, when the file is referred to a doctor for review of the Claimant's release and medical records. A June 12 entry states that in a conversation with the Claimant he confirmed that he was no longer taking tramadol, and he was then declared medically fit for duty.

The Organization argues that Carrier was unjustified in withholding the Claimant from service after his release to return to work on May 5. It relies upon the medical release indicating that the Claimant had no restrictions and was on no medication, which it asserts that the Claimant turned in to Carrier on May 3, to support its contention that the delay between May 5 and June 12 was not caused by any action on the Claimant's part, and there was no justification shown by Carrier for such lengthy delay, relying on Third Division Awards 24393 and 32933. The Organization contends that Carrier should bear the financial burden suffered by the Claimant as a result of its delay in returning the Claimant to work, citing Third Division Awards 44070 and 42978.

Carrier first contends that it has the well-recognized right to withhold employees 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, citing PLB 6302, Award 8. It maintains that the delay in returning the Claimant to service was the result of his being prescribed tramadol, a restricted medication that does not permit the return of a safety sensitive employee to work in the field. Carrier asserts that it did not receive the Claimant's medical records until June 1, and that, once it was confirmed that he was no longer taking tramadol, he was immediately released to return to work.

A careful review of the record convinces the Board that, while Carrier was well within its rights to withhold the Claimant from returning to work for safety reasons if he was taking a restricted medication, the Organization has validly called into question Carrier's assertion that it released the Claimant as soon as it learned that he was no longer taking tramadol. The only medical release form in the record - which was ultimately relied upon by Carrier in returning the Claimant to work - is dated April 26 and states that he was released to full duty on May 5, 2018, that his Rx is concluded, he is taking no medication, and has no restrictions. Carrier's Medical Comments history shows that on April 11 Carrier's Medical department received a revised return to work date for the Claimant of May 5, but received no medical records. Carrier's reliance on the fact that there is no entry between that and June 1, where it indicates that his release was submitted with medical records, is insufficient to meet its burden of showing a valid medical basis for not returning the Claimant to work after May 5. The Organization asserted in both its claim and appeal that the Claimant submitted, and Carrier received, his medical release on May 3 in anticipation of the May 5 date.

Unlike Medical Comments histories typically submitted by Carrier, showing all action taken on an employee's file by the medical department, the absence of any entry between April 11 - when Carrier knew that the Claimant's anticipated return to work date was May 5 - and June 1 is insufficient to prove that the Claimant had not submitted his medical release prior to, or on, its effective date, when it was completed by his doctor over a week earlier. There is no record evidence that the Claimant was ever questioned or contacted after May 5 to submit documentation showing that he was no longer taking tramadol, or asking for his medical records including a copy of his medical release. That conversation did not occur with the Claimant until June 12. While the Organization bears the burden of proof in this case, Carrier must provide evidence that the reason for failing to return the Claimant to work has some medical validity. See, e.g. Third Division Award 42978; 24393, 32933. It failed to do so in this case.

Accordingly, the time it took for Carrier to confirm that the Claimant was not taking tramadol was unreasonably lengthy, and there was no medical basis for questioning that the Claimant was not taking any medications after receipt of the doctor's release clearly so specifying. If no release was forthcoming after May 5, it was incumbent on Carrier's medical department to follow up and request documentation. Assuming it did so timely, it would have learned of the terms and clarity of the Claimant's May 5 release significantly before June 1 to permit any follow up with the

Claimant to have occurred within a reasonable time period of two weeks following his May 5 release. Therefore, the Board finds that the time period the Claimant was withheld between May 19 and June 12 was occasioned by Carrier's excessive and arbitrary delay, and is compensable. See, Third Division Award 43587.

Under these circumstances, we find that Carrier must bear the financial cost of the unnecessary delay in returning the Claimant to work after his May 5, 2018 release for full duties without restriction. However, there is no Agreement support for inclusion of overtime in such calculation. See, PLB 7660, Award 82 (Interpretation of Award 19). The Claimant shall be compensated for his straight time hours between May 19 and June 12, 2018.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 29th day of July 2021.