

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44533
Docket No. MW-43864
22-3-NRAB-00003-210218**

The Third Division consisted of the regular members and in addition Referee Patricia T. Bittel when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division
(IBT Rail Conference**

PARTIES TO DISPUTE: (
(BNSF Railway Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when, beginning on April 16, 2015 and continuing, the Carrier failed to reimburse Claimant D. Scott for unpaid medical expenses, lost wages and personal "vehicle mileage incurred as a result of the Carrier's requirement that Claimant take a stress test (System File C-15-P018-8/10-15-0294 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant D. Scott shall ' ... be paid (1) \$433.44 for the two (2) days of work that he was forced to miss, due to the fact that he was forced by CHS to take a stress test; (2) be paid \$204.13 for his unpaid Medical bill that he received from Kearney Regional Medical Center, as well as, \$70.00 for his Insurance Co-Payments; and (3) that he be paid \$126.50 for his personal vehicle mileage that he incurred for having to make two (2) trips from his residence in Ansley, Nebraska to Kearney, Nebraska and then back to Ansley, Nebraska; for a total of \$834.07 because of the Carrier's violation of the Agreement.... '"**

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.

Factual Background:

On December 19, 2014, the Claimant was required to take his annual Department of Transportation (DOT) physical because his position as a truck driver requires him to be DOT/CDL qualified. The Claimant passed the DOT physical and provided the Carrier's "Comprehensive Health Services" (CHS) with the results. CHS then required the Claimant to additionally provide a medical release from his cardiologist; the Claimant complied. The Carrier deemed it insufficient and advised the Claimant he would have to take a stress test. CHS did not set up the stress test, but advised the Claimant he would have to do it himself.

Per CHS' s request, the Claimant scheduled a stress test in Kearney, Nebraska. On February 14, 2015, he drove his personal vehicle from Ansley, Nebraska to Kearney, Nebraska for the preliminary check-up before his stress test. Then on March 6, 2015, the Claimant again drove to Kearney, Nebraska and completed the stress test. As a result of the Claimant the stress test requirement, the Claimant was forced to miss work on February 14, 2015 and March 6, 2015 and had to drive a total of two hundred twenty (220) miles. In addition, he received a medical bill from Kearney Regional Medical Center and was required to cover the cost of two \$35 insurance co-payments. The Organization has claimed the Carrier violated the Agreement when it failed to reimburse the Claimant for his unpaid medical expenses, lost wages and personal vehicle mileage related to the stress test.

Position of Organization:

The Organization notes that many of the facts of this case are undisputed. In its view it was a contract violation to impose the stress test requirement on the Claimant without reimbursement for his time and costs. It maintains the Carrier has been unreasonable in that the Claimant had already passed the DOT physical and provided

the Carrier with the requested medical release from the Claimant's cardiologist. There is also no dispute that the Claimant was required to travel to Kearney, Nebraska on two (2) separate occasions to complete the stress test, or that each trip was one hundred ten (110) miles round trip. The Organization contends that the requirement of the Claimant's stress test was entirely arbitrary.

As the Organization sees it, the violation occurred on April 6, 2015, when the Carrier declined to reimburse the Claimant, and the claim is therefore timely.

In calculating the remedy, the Organization notes the Claimant missed two days of work and is clearly entitled to be paid for sixteen (16) straight time hours at \$27.09 per hour, for a total of \$433.44. the Claimant received a Medical bill from Kearney Regional Medical Center for \$204.13, for the additional tests that he was directed by CHS to complete. The Claimant was also forced to make Insurance Co-payments of \$35.00 for each test. In addition, the Claimant should have been paid for his personal vehicle mileage for the two hundred twenty (220) miles that he drove, at fifty-seven and one-half (\$.575) cents per mile.

Position of Carrier:

In the Carrier's view, the violation alleged by the Organization occurred on February 14 and March 6, 2015, the dates when the Claimant was required to travel to undergo a stress test. It concludes that the claim is untimely.

The Carrier has relied on the "Maintaining Your Way" Commercial Motor Vehicle Drivers Medical Certification renewal process self-help guide, which states as follows:

Financial Responsibilities

**BNSF pays for the CMV Driver's Medical Certification Exam only.
Additional medical information requested to substantiate management
of a personal medical condition will be the employee's responsibility.
Mileage and paid time off are governed by the appropriate collective
bargaining agreement.**

Rule 24 – Forty Hour Work Week, states:

*Subject to the exceptions contained in this Agreement, a work week of forty (40) hours, consisting of five (5) days of eight (8) hours each, with two (2) consecutive days off in each seven (7) is hereby established. The work weeks may be staggered in accordance with the Company's operational requirements. So far as practicable the days off shall be Saturday and Sunday. This work week rule is subject to the provisions which follow. * * **

M. Guarantees

Nothing in this rule shall be construed to create a guarantee of any number of hours or days of work.

The Organization has cited Rule 25, which describes the Basic Day of Work, and Rule 35, regarding travel time from one point of work to another; the Carrier maintains neither of these bear on the case.

The Carrier asserts that the February 24 and March 6 missed dates from taking the test are beyond the reach of the belated claim. It further notes that the Claimant took vacation on those dates, and therefore has already been paid for them. The Carrier points out that the Boards which have looked at the issue have concluded that undergoing a physical examination is not considered as work. Further, it argues the Agreement makes no provision for reimbursement of medical costs.

It notes a Company newsletter has advised employees that additional tests are at expense of the employee. In its view, additional tests are for safety reasons, and an employee is not forced to take them. The Carrier points to prior awards which define work as the type of work to which employees are regularly assigned, thereby excluding physical examination from being considered “work” within the meaning of the Agreement. It distinguishes the Awards cited by the Organization on the grounds that those cases involved situations where the Carrier and the employee had no mutuality of interest, so the attendance of the employee at the examination or other event inured exclusively to the Carrier.

Analysis

The Carrier has pointed out that to the extent there was a violation in this case, it occurred on February 14 and March 6, 2015. We are not persuaded by this

argument. It was not until April 6, 2015 that the Claimant learned he would not be reimbursed. It is true that one would expect the Carrier to articulate its rationale for requiring the stress test at the point in time when it was being required. However, despite the lack of reasons from the Carrier, the Claimant complied because he wanted to keep his position as truck driver. Refusal could have cost him that position. His action, instead, was to request reimbursement. This gave the Carrier another chance to provide a rational basis for its decision to require a stress test. The record fails to show that any explanation was ever given. Hence, it was at the point of refusal to pay the Claimant's expenses that the Carrier's continuing failure to provide reasons for requiring the stress test became final.

The Organization has asserted an abuse of management rights in that the requirement of a stress test was arbitrary. Such a claim is cognizable under the parties' dispute resolution procedure; management is required to be reasonable in its exercise of discretion, and abuses of discretion are subject to the grievance process.

It is undisputed that the Claimant passed his DOT test and also that his cardiologist provided the Carrier with a medical release to work. At that point, it became the Carrier's burden to provide a reasonable basis for its actions. In view of the fact that both the DOT test and the Claimant's cardiologist deemed the Claimant ready to work as a truck driver, there is no explanation on the record as to why a stress test was deemed necessary. The record supports a contrary conclusion: the Claimant had provided documentation of his readiness to work yet the Carrier, without any apparent reason, required the Claimant to jump through more hoops. The Carrier has not provided any medical or safety-related justification for its decision to require the stress test. The Board is left with no justification for this decision. The Carrier abuses its discretion when it requires employees to expend time and money for medical testing without a reasonable basis for doing so. It follows that the requirement was indeed arbitrary and the Organization must prevail.

The Board fully recognizes that the Agreement does not provide for compensation or travel costs pertinent to medical tests. However, the breach here was not one of failure to compensate for a reasonably required stress test; the breach was in the baseless and arbitrary requirement of the stress test in the first place. As such, it is the duty of the Board to put the Claimant in the same position as if the breach had not occurred. This can only be achieved by granting the claim in full, with the modification of crediting the existence of his medical insurance.

Claim sustained in part. the Claimant D. Scott shall be \$433.44 for two (2) days of missed work. Insofar as his medical bill would have been covered by insurance, he shall be reimbursed for his co-pay in the amount \$70.00 and he will be paid \$126.50 for his personal vehicle mileage for a total of \$629.94. Any claim not expressly granted herein is denied.

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 8th day of October 2021.