

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44592
Docket No. MW-44790
22-3-NRAB-00003-170650**

The Third Division consisted of the regular members and in addition Referee James M. Darby 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 the Carrier continued to withhold Machine Operator R. Johnson from service beginning March 1, 2016 and continuing instead of allowing him to return to duty following his being fully released by his personal physician (System File 2405-SL13-161/14-16-0351 BNS).**
- (2) The Agreement was violated when the Carrier continued to withhold Machine Operator R. Johnson from service beginning May 1, 2016 and continuing instead of allowing him to return to duty following his being fully released by his personal physician (System File 2405-SL13-162/14-16-0338).**
- (3) As a consequence of the violation referred to in Part (1) above, Claimant R. Johnson shall now be compensated for all straight time and overtime hours lost at the appropriate rates of pay.**
- (4) As a consequence of the violation referred to in Part (2) above, Claimant R. Johnson shall now be compensated for all straight time and overtime hours lost at the appropriate rates of pay.”**

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.

The record shows that during the week of December 7, 2015, the Claimant lost consciousness for an unknown reason and fell down the stairs at a hotel where his Region System Gang (“RSG”) was staying. Thereafter, the Claimant requested and was granted a medical leave of absence for his off-duty injury that began on December 9, 2015. While the Claimant was on his leave of absence BNSF’s Medical Department frequently communicated with him about how his medical conditions could adversely affect his ability to return to service, advising him on the type of treatment or evaluation that would be needed before he could be fully released to return to service.

Beginning in February through May 2016, BNSF’s Medical Department started receiving partial releases from the Claimant’s own physicians regarding his fitness for duty. However, the evidence establishes that none of the releases fully addressed each of the Claimant’s three conditions. On May 20, 2016, the Medical Department finally received all of the releases and medical documentation needed to ensure that the Claimant could safely perform the duties of a Maintenance of Way (“MOW”) employee for the Company. After reviewing all of that documentation, the Medical Department released the Claimant to return to unrestricted service on a provisional basis May 23, 2016.

The Organization filed its first grievance on behalf of the Claimant on April 28, 2016. It argued that, essentially, BNSF violated the unjust treatment rules in both of the MOW Agreements—Rule 13 of the South Agreement and Rule 62 for the former-BN Agreement—on March 1, 2016 by not returning the Claimant to service on March 1, 2016. It later filed another duplicative grievance on May 18,

2016 again asserting the Claimant was unjustly treated beginning on May 1, 2016. BNSF denied the Organization's claims on the basis that, at that time, the Claimant's physicians had not provided all of the necessary medical evidence supporting the Claimant's ability to safely perform his duties justifying a full duty release.

After carefully reviewing the instant record, the Board concludes that the claim must be denied. Arbitral precedent has consistently held that BNSF has a broad right to determine the physical fitness of its employees and has the right to withhold employees from service until they are determined to be physically qualified to work. In this particular case, BNSF's Medical Department was not notified by EAP until May 20, 2016 that the Claimant was released from an inpatient facility for alcohol abuse on May 13, 2016. Under these circumstances, issuing the Claimant an unrestricted provisional return to service on May 23, 2016, was expeditious and proof of Dr. Knight's concerted effort to get the Claimant back to service as quickly as possible. The Claimant's return to service was on a provisional basis because he needed to provide follow-up information regarding successful compliance with treatment for his sleep apnea. A Medical Questionnaire submitted by the Claimant on May 2, 2016 revealed this additional medical condition he failed to disclose previously.

As this Board has previously held:

It is well established that a Carrier has the right, upon reasonable cause, to subject an employee to appropriate medical evaluation to determine his fitness to perform the duties of his position in a safe and responsible manner. It has also been held that the Carrier may, in proper circumstances, withhold the employee from service pending the results of such evaluations.

Third Division Award No. 28506 (1990)

Accordingly, for all these reasons the claim is denied.

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 October 2021.