Form 1 **NATIONAL RAILROAD ADJUSTMENT BOARD**
THIRD DIVISION

Award No. 44824
Docket No. SG-46627
23-3-NRAB-00003-210331

The Third Division consisted of the regular members and in addition Referee Michael D. Phillips when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(CSX TRANSPORTATION, INC.

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation (formerly C&O, Chesapeake District):

Claim on behalf of B.M. Baird, Jr., for $1,087.63, account Carrier violated the CSXT Labor Agreement 15-004-18 (Commercial Driver's License (CDL) Agreement), when Carrier's medical examining vendor required the Claimant to undergo additional medical evaluations to acquire his CDL and failed to reimburse him for the time and expenses incurred on August 4-5, 2019. Carrier's File No. 19-88029. General Chairman's File No. 19-30-CD. BRS File Case No. 16329-C&O(CD). NMB Code No. 127."

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 case involves an alleged violation of CSXT Labor Agreement No. 15-004-18, which provides in pertinent part that "the Carrier will reimburse employees for time and/or expense required to obtain and maintain a CDL." ("CDL Agreement")

The Organization submitted a claim on November 13, 2019, contending that the Carrier violated the CDL Agreement when it denied payment to the Claimant B. M. Baird, Jr. of $1,087.63, representing 10 hours at his overtime rate of pay for time spent at a medical examination, $10.56 for travel to the examination, and $435.37 for the out-of-pocket examination expense. The claim alleged that the Carrier's medical examining vendor required the Claimant to undergo additional medical examination in order to acquire a CDL medical card to maintain his CDL, as required by the issuing state, as well as the CBA and Carrier requirements. It stated that the Claimant reported to the designated facility at 9:00 PM on August 4, 2019, and was released at 6:00 AM on August 5, 2019, totaling 10 hours, and that he had incurred expense in traveling to the facility and costs for the examination.

The Carrier denied the claim, stating that it is not responsible for costs associated with a medical issue under the terms of the CDL Agreement. It stated that costs associated with a medical condition or test must be submitted to the Claimant's health and welfare provider, and that the Claimant is responsible for any balance due the vendor or health care facility. It also denied that the Claimant was entitled to payment of overtime or reimbursement of expenses for reporting to a medical facility on his rest days.

The Organization submitted an appeal, arguing that the CDL Agreement clearly addresses who is responsible for the costs and time associated with obtaining and maintaining a CDL. It alleged that regardless of a personal medical condition or the nature of the tests, the directive of the vendor for the Claimant to submit to the examination resulted in costs necessary to obtain or maintain a CDL, and that the Carrier is responsible for covering those costs. The Organization added that the CDL Agreement also covers an employee's time, and it argued that the Claimant was entitled to time and one half for being on duty outside of his assigned hours.

The Carrier denied the appeal, again maintaining that no violation of the CDL Agreement had been established. It stated that there was no evidence to show that a sleep study was done or that it was related to maintaining the Claimant's CDL. It further stated that there was no evidence a sleep study was ordered by the vendor or that the Carrier required the study to be performed. The Carrier added that there was no evidence that the Claimant was restricted from operating a CDL vehicle prior

to the test or that the Carrier had restricted him from operating a CDL vehicle at the time the study was undertaken. The Carrier asserted that a sleep study may be ordered by a medical professional for various reasons, or that it may be done voluntarily. It maintained that there was no evidence to establish that the test was related to the Claimant's CDL or that it was required for him to maintain his CDL. It stated that no information had been provided as to why the vendor would have required the Claimant to submit to a sleep study nearly six months in advance of his CDL medical certificate expiration. The Carrier added that a sleep study would not constitute work or service which would entitle an employee to pay.

The parties discussed the matter in conference, maintaining their respective positions. The matter now comes to us for resolution.

The parties' positions before us are essentially the same as those set forth in the on-property handling described above. The Organization maintains its stance that the agreement in question is clear and unambiguous, and that the Carrier was obligated thereunder to reimburse the Claimant for the costs of the examination necessary for him to maintain his CDL and to pay him for his time spent attending the examination. It denies that the Claimant would attend a sleep study of his own volition, and it states that the Carrier's argument that the Claimant was never directed to attend the examination is unfounded. The Organization cites prior awards which have held that the Carrier must reimburse costs associated with obtaining a CDL and expenses necessary to maintain employment. It states that the Board cannot add an exception to the CDL Agreement which is not contained therein, and it urges that the claim be sustained.

The Carrier, on the other hand, maintains its position that no violation of the CDL Agreement has been established. It reiterates that there is no evidence of record to demonstrate that the study was performed or that it was related to Claimant maintain his CDL. The Carrier cites prior awards which hold that it is the Organization's burden in these matters to present actual evidence to establish each element of an agreement violation, including alleged damages, and which hold that mere assertions are not proof. The Carrier posits that the Organization has not met its burden of proving an agreement violation in this case, and it concludes that the claim therefore must be denied.

We have carefully reviewed the record, including the correspondence, attachments, and citations of authority, and we are unable to find that the Organization has established a violation of the cited agreement. While the rule

imposes an obligation on the Carrier to reimburse employees for time and/or expense required to obtain and maintain a CDL, we have not been provided with any actual evidence to establish that the claimed amounts are indeed connected to the Claimant maintaining a CDL. While we may agree with the Organization that the circumstances might suggest some connection, we cannot base a finding on mere speculation. It is fundamental that the Organization bears the burden of proving that the challenged action is contrary to the applicable agreement provisions, and we find that the facts presented here are insufficient to meet that burden. The awards cited by the Organization involved actual evidence to support the allegations, so we do not believe they require a different conclusion. Therefore, we must deny the claim.

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 21st day of December 2022.