

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44825  
Docket No. SG-46628  
23-3-NRAB-00003-210374**

**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 Baltimore & Ohio):**

**Claim on behalf of A. Combs, for compensation for all lost wages, including Holidays and overtime, with all seniority and benefits unimpaired, between August 29, 2019, through November 2[18], 2019, account Carrier violated the current Signalmen’s Agreement, particularly CSXT Labor Agreement No. S-010-88 (Drug and Alcohol) and S-187-86, when it excessively delayed the Claimant’s return to service as outlined in the Agreement, thereby resulting in a loss of work opportunity for the Claimant. Carrier’s File No. 19-01048. General Chairman’s File No. 19-30-88. BRS File Case No. 16384-B&O. NMB Code No. 106.”**

**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.

In March 2019, Claimant A. Combs informed the Carrier that his driving privileges had been revoked due to a DUI while off duty. The Carrier withheld the Claimant from service on March 16, 2019, and it required the Claimant to get an assessment through the Employee Assistance Program (EAP). This case involves the period between the date the Organization alleges the Claimant was cleared to return to service and when he was actually allowed to return on November 18, 2019, and whether the Carrier improperly delayed the Claimant's return to service.

The Organization submitted the instant claim on October 28, 2019, contending that the Carrier violated CSXT Agreement S-010-88 (Drug and Alcohol) and S-187-86 when it failed to return the Claimant to service or follow proper procedures in the agreement in delaying and stopping the Claimant from returning to work. It set forth a timeline of events, stating that, after the Claimant was removed from service on March 16, 2019, he talked to an EAP counselor in April so he could get enrolled in a program he needed to return to work. It stated that the Claimant was then issued a charge letter for a disqualification hearing on May 1, 2019, which improperly designated him as a maintenance of way employee, but that he was never disqualified from holding a non-CDL position and should have been able to continue working as soon as he was able to drive. The Organization argued that the Claimant was misguided by counselors as to what he needed to do to return to work.

The Organization stated that the Claimant received a temporary driver's permit in June, but that he was then told the permit was inadequate due to limitations on the hours of driving permitted. It stated that the Claimant resolved that issue and talked to Carrier personnel who instructed him to go into the EAP program, but that late June was the first time he was instructed to do so. The Organization added that after completing the EAP program, he was instructed that he needed another assessment before he could return to service. It contended that the Claimant had done everything he was required to do, but that the Carrier and its contractor did not put him into the correct treatment program, resulting in the Claimant unnecessarily being left out of service for an extended period. The claim sought compensation for lost wages incurred within 60 days prior to the date of the claim.

The Carrier denied the claim, stating that the Organization had not provided any detail as to how the Carrier allegedly violated the cited rules or how the Claimant was entitled to pay for a period in which he had been held out of service by the medical department and EAP. It stated that the incorrect charge letter was irrelevant, as there

was no indication that he had been charged with anything, and it asserted that the Claimant was misguided by EAP counselors was unsubstantiated. It added that Claimant's EAP counseling is confidential and could not be addressed in that forum. The Carrier also denied that there was any evidence the Claimant had been put in an inappropriate program. It concluded that the Organization had not supported its assertions with facts or evidence.

The Organization submitted an appeal, arguing that, while the Claimant acknowledged his responsibilities in connection with the off-duty alcohol related infraction and that he sought treatment to avoid a recurrence, the period the Claimant was withheld from service was excessive. It stated that normally employees in such circumstances are out of work between 30 and 60 days, but that the Claimant could not work for 246 days because the Carrier handled the problem incorrectly. The Organization reiterated the Claimant's efforts with respect to obtaining a permit which would allow him to work, and it contended that EAP personnel delayed before informing him three months after the incident that he needed EAP clearance to return to service. It stated that the Claimant completed the EAP process in late September 2019, but that he was then informed he needed another assessment so that a required form could be completed. The Organization requested that the Claimant be paid for lost work opportunity from August 29, 2019 until the day he returned to service due to delays attributable to the Carrier or its contractors.

The Carrier denied the appeal, again maintaining that no violation of the cited agreements had been established. It set forth a chronology of events leading to the Claimant's reinstatement, which included dates pertaining to the Claimant's disqualification due to lack of a CDL and the unavailability of positions which could be worked with a restricted permit, as well as dates pertaining to the Claimant's interaction with EAP. The Carrier stated that the Claimant had delayed almost three months after his disqualification due to the DUI offense before contacting EAP. It stated that it could not be liable for any time the Claimant was out of service, as he lacked the necessary qualifications for his position due to the license suspension. It concluded that the Organization had not articulated how the Claimant was entitled to compensation for a period in which he lacked the necessary qualifications, and that there was no evidence to support the alleged rule violations.

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 Carrier violated the agreement by denying the Claimant's rights when it withheld him from service for an excessive amount of time. It argues that the Carrier's own lack of experience in handling such a situation prevented it from providing a pathway to assist the Claimant with a timely return. The Organization states that every time the Claimant met a requirement imposed by the Carrier, the Carrier would add additional criteria. It avers that the Claimant was fully aware of the implications of his actions, that he was honest throughout the process, and that he worked to resolve the issue to ensure there would be no future problems, but that the Carrier's decision to withhold Claimant from service for an extended period was an abuse of managerial discretion.

The Organization cites multiple awards which have addressed employees being withheld from service for medical evaluations, and it describes a guiding principle therein that a Carrier's rights in that regard are not unfettered and that the Carrier cannot arbitrarily or unnecessarily prolong the evaluation process. It states that the Carrier bears the burden of making adequate assessments with due diligence to ensure an employee's return to service with minimal losses, and that the Carrier bears the "risk of fallibility" when it improvidently withholds an employee on medical qualification grounds. The Organization contends that the Carrier in this instance failed to substantiate the need for the Claimant to be withheld from service for the period it did, and it urges that the claim be sustained.

The Carrier, on the other hand, maintains its position that no violation of the cited agreements has been established. It states that the Organization must present evidence to establish that an agreement violation occurred, but that none was offered in this case. It states that there is no evidence regarding the allegations that the Claimant attempted to contact EAP, until nearly three months after he was disqualified due to the DUI offense and having his license suspended. The Carrier reiterates its contention that the Claimant was not qualified to hold his position during the period in question due to his lack of an appropriate license.

The Carrier asserts that it is well settled that it has the right to manage its workforce, including the right to require an unrestricted driver license. It states that the Claimant was medically disqualified for safety reasons after the DUI was reported, and that the Claimant was properly removed from service and referred to EAP. It cites prior awards which have held that a Carrier has the right, duty, and responsibility to remove an employee from service if it believes the employee is a safety

risk pending the results of evaluations. The Carrier states that it did not delay any evaluation here, but that the Claimant's own actions in failing to make timely contact with EAP contributed to the time frame. The Carrier concludes that there is no proof to establish an agreement violation, and that the claim therefore must be denied.

We have carefully reviewed the record, including the correspondence, attachments, and citations of authority, and we find that the Organization has not established the Claimant is entitled to the requested payment. Although the statement of claim here and the on-property claim both allege a violation of two specific agreements, the Organization states before us that the cited rules have no criteria for proper handling of this type of situation. We have reviewed those agreements, as they are exhibits to the Carrier's submission, and we agree that they do not address the case at hand. We therefore cannot find an agreement violation in these circumstances.

We have also reviewed the arbitral authority submitted by the Organization, and we do not believe it requires a different conclusion. Those cases involve instances in which an employer's determination to withhold an employee from service was not found to be substantiated, and compensation was awarded on the basis that an employee withheld from service who was not actually unfit should not bear the costs of the employer's misjudgment. We do not believe those circumstances are present here. In fact, as the Organization notes, the Claimant recognized a need to address the circumstances which led to the DUI, and we find no basis to conclude that the EAP clearance requirement was arbitrary or unwarranted.

While there is some indication that the process which led to the Claimant's ultimate return to service was drawn out to some extent, we are unable on this record to conclude that the Carrier was responsible for any inordinate delay. The time frame for an employee's return to service in such circumstances is unique to each person, and we find no specific requirement in that regard. There also seems to be no question that the EAP clearance requirement was within the Carrier's prerogative, and the allegations regarding the necessity of additional medical or EAP clearances are not sufficient in our view to establish that the requirements were inappropriate or that the Carrier improperly delayed the Claimant's return to service once he was cleared and demonstrated he had the required driver's license. The allegations that the Carrier was dilatory or that it caused a delay are simply too vague and unspecific for us to conclude otherwise. In these circumstances, we cannot find a basis to award the requested payment.

**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 21<sup>st</sup> day of December 2022.