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

Award No. 44869
Docket No. SG-47058
23-3-NRAB-00003-220259

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
(Canadian Pacific Railway

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Canadian Pacific Railway:

Claim on behalf of N. Law, for 88 hours and 16 hours holiday pay, paid at his respective straight-time rate of pay; account Carrier violated the current Signalmen's Agreement, particularly Rule 17(e) and 31(a), when Carrier instructed the Claimant to quarantine for 14 days and failed to pay him 40 hours per week as outlined in the Agreement, which resulted in a loss of 104 hours to the Claimant. Carrier's File No. 2021-00019862. General Chairman's File No. 2021-00019862. BRS File Case No. 5345. NMB Code No. 308 – Contract Rules: Pay/Allowances/Penalty."

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.

On November 13, 2020, Claimant N. Law reported potential COVID-19 exposure while off duty. After contacting the Carrier's COVID-19 hotline, the Claimant was instructed to self-quarantine for 14 days, during which period he was not permitted to work, and he was not compensated for workdays missed. He was also not paid for a holiday which occurred during that period.

The Organization initiated the instant claim on the Claimant's behalf, contending that the Carrier had improperly prevented the Claimant from working a forty-hour work week as provided for in Rule 17 of the applicable agreement. It stated that, while the Claimant had been fit and available for work, the Carrier's COVID-19 response team had instructed him to quarantine himself between November 13 and November 29, 2020, resulting in a wage loss of 104 hours. The claim sought pay for the time the Claimant was not allowed to work, including 16 hours Holiday Pay for the Thanksgiving Day and Day After Thanksgiving holidays which fell within the time the Claimant was out of service.

The Carrier denied the claim, stating that it was complying with Center for Disease Control (CDC) guidelines put in effect to address the ongoing COVID-19 pandemic. It noted that the Claimant had reported potential off-duty exposure to COVID-19, and it added that the Claimant had been provided instructions on seeking RRB sickness benefits and insurance benefits.

The Organization submitted an appeal, stating that the Carrier was incorrect in suggesting that the Claimant had a personal ailment. It asserted that the Claimant did not elect to refrain from coming to work for 14 days, but that it was the Carrier who instructed the Claimant to quarantine himself. The Organization stated that the onus thus was on the Carrier to compensate the Claimant, as he had no choice in the matter.

The Carrier denied the appeal, again stating that it complied with CDC guidelines once the Claimant reported to the COVID-19 hotline that he had contact with someone who was positive for COVID-19. The Carrier averred that it had an obligation to other employees to ensure that they have a safe work environment. In neither the initial claim denial nor the appeal denial did the Carrier address the request for Holiday Pay under Rule 31.

The parties discussed the matter in conference, which the Carrier documented in additional correspondence. It emphasized that the parties were in the middle of a global pandemic, which was impacting multiple facets of life, and that the effects were widespread, ongoing, and tragic. The Carrier cited the CDC guidelines which explained

the necessity of quarantine to help prevent the spread of disease, which included staying home, separating from others, and monitoring health. It also noted that the guidelines included advice that spread of disease can occur before a person knows they are sick or if they are infected with the virus without feeling symptoms. The Carrier asserted that the Claimant was properly removed from service to self-quarantine in an effort to avoid potentially spreading the virus to fellow colleagues and their families, and the community at large. The Carrier supported its argument with citations to CDC data reporting the increasing numbers of COVID-19 cases. It maintained that it would be derelict in its duties if it permitted employees exposed to COVID-19 to continue working and endangering the welfare of other employees, customers, and communities.

The parties concluded the claim handling through the on-property appeal process, but they were unable to resolve it. The matter now comes to us for resolution.

The parties' positions are essentially the same as those described in the on-property handling. The Organization reiterates its position that the Carrier arbitrarily forced the Claimant to miss work opportunities for potential exposure to COVID-19, but that the Carrier failed to initiate an appointment with a physician to determine if the Claimant was actually infected with the virus. It states that the Carrier is using the CDC guidelines as a scapegoat and an excuse for not compensating the Claimant under Rule 17. The Organization contends that the Carrier raised an affirmative defense, but that it has not substantiated it with facts that the Claimant ever came in contact with someone infected with COVID-19 or that he was infected himself.

The Organization maintains that the Carrier cannot rely on CDC guidelines to supersede agreement language. It states that, while it is understandable that the Carrier may follow those guidelines, the Carrier nevertheless bears the responsibility to compensate the Claimant pursuant to Rule 17. The Organization argues that the Claimant is entitled to all of the lost earnings he suffered by the Carrier's arbitrary and unreasonable decision to involuntarily quarantine the Claimant.

The Organization cites prior awards which have held that the Carrier bears the burden of having reasonable grounds to force an employee on a leave of absence. It states that such authority provides that if the Carrier is wrong in its initial assessment and the employee is medically able to perform the work, it is the Carrier which bears the financial consequences of its decision to withhold the employee from work. The Organization also cites authority for the principle that an employer must complete medical review promptly, and that an employee should not bear the burden of a delay.

The Organization also maintains that the Carrier improperly denied the Claimant Holiday Pay for Labor Day. It states that Rule 31(a) of the Agreement provides for 8 hours pay at the straight-time rate for such holidays, and that there was no basis for the Carrier to deny that payment when the Claimant worked the day before and the day after he was forced to quarantine.

The Organization concludes that the Carrier violated the agreement when it arbitrarily withheld the Claimant from service even though he could have been tested to expedite his return, and that the Carrier failed to return the Claimant to service in a reasonable amount of time. It states that the Carrier provided no valid basis for forcing the Claimant on an involuntary leave of absence, and it avers that the Carrier must now compensate the Claimant for all time lost.

The Carrier, on the other hand, maintains that the record does not establish any violation of Rule 17. It states that there is no question that the Claimant had reported exposure to a person who was exposed to COVID-19, and that he therefore was properly instructed to self-quarantine under the advice of the CDC and other global medical experts. The Carrier reiterates that this event occurred during a global pandemic, which has had widespread and tragic effects, which the CDC had addressed with its guidelines, including self-quarantine instructions. It emphasizes the CDC data regarding case numbers, and it avers that the Claimant was properly removed from service in an effort to avoid potential spread of the virus to his coworkers and others. The Carrier asserts that it is not responsible to pay employees who are not able to perform service due to medical disqualification. It also contends that the Claimant was not fit for work on the holiday, nor was he available to qualify for Holiday Pay, and it urges that the claim be denied.

We have thoroughly reviewed the parties' arguments, correspondence and citations of authority, and we find that the Organization has not met its burden of establishing an agreement violation in these circumstances. We do not take issue with the principles set forth in the awards cited by the Organization, which place the "risk of fallibility" on the Carrier when it makes a determination to withhold an employee from service for medical concerns. In applying those principles to the instant case, however, we do not believe that the Carrier acted arbitrarily or unreasonably in withholding the Claimant from service for the period in question.

The award authority cited by the Organization reasonably holds that, if a supervisor or other management official believes an employee is not physically qualified to perform service, and the evidence reveals that such belief was unfounded, the

employee should not suffer a loss based on the manager's erroneous belief. The awards also stand for the principle that any medical review and determination of an employee's fitness to return to work must be made in a reasonable amount of time.

Here, we find no indication that the Carrier's determination the Claimant should be withheld from service was arbitrary or unreasonable, nor do we find any indication that the Claimant's return to service was unnecessarily delayed. Unlike typical cases involving such issues, this is not an instance where a manager with no medical qualifications observes an employee having some apparent difficulty performing a work task and takes it upon himself to remove the employee from service pending a medical exam. To the contrary, we believe that the Carrier's decision in this case was motivated by a reasonable attempt to comply with medical guidance regarding how to prevent spread of an unprecedented and debilitating pandemic after the Claimant reported potential off-duty exposure to COVID-19. There appears to be no dispute that the Carrier's actions were consistent with advice from the CDC on how to address persons who reported experiencing symptoms consistent with COVID-19 or who reported exposure to other individuals who may have been infected, and there is no indication that the timeframe involved was in excess of that prescribed by the CDC guidelines.

We are not unsympathetic to the circumstances of an employee who lost wages during the pandemic due to having to quarantine. We are also aware that some employers have taken a different view of how to address lost work opportunities in such circumstances, either to incent employees to avoid coming to work and possibly spreading the virus, or simply for humanitarian reasons. The Carrier in this case, in fact, reports that it handles cases involving possible exposure at work differently than reports of exposure occurring outside the workplace. In any event, we are constrained to determine if an agreement violation has been established when the Carrier required the Claimant to quarantine and did not compensate him when he could not work, not to say what we think would be considerate or charitable. We do not find that a violation has been established here with respect to the Carrier's decision to withhold the Claimant from service.

With respect to the claim for Holiday Pay, we note that the only agreement language supplied to us by either party is that of Rule 31(a), which lists the holidays for which employees are entitled to 8 hours straight-time pay. We are aware that many holiday pay agreements contain specific eligibility requirements, such as receipt of pay for compensated service the day before and the day after the holiday, but we have been provided with no such limiting language here, nor have we been referred to any authority which addresses the circumstances we are facing here.

The Organization has cited, however, award authority for the proposition that if a carrier withholds an employee from service on a qualifying day, the assessment of eligibility is dependent on the days the employee was permitted to work before and after the holiday. See, e.g., Third Division Award No. 13377. Whether such qualifying language is even applicable to Rule 31(a) here, we also note that we have considered multiple cases on the current docket involving the Carrier withholding employees from service for quarantine due to COVID symptoms or exposure, and in some of them, the Carrier did make holiday payments to employees who were quarantined over listed holidays. In this case, there is no indication that the Claimant would otherwise have been unavailable at any time during which he was withheld from service. We therefore conclude that, based on the specific circumstances and the record presented here, the Claimant was entitled to holiday pay for the holidays listed in Rule 31(a) during the period the Carrier required him to be in quarantine.

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 10th day of March 2023.