

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44909
Docket No. SG-46399
23-3-NRAB-00003-210106**

The Third Division consisted of the regular members and in addition Referee Kathryn A. VanDagens when award was rendered.

PARTIES TO DISPUTE: (
(Brotherhood of Railroad Signalmen
(Union Pacific Railroad

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad:

Claim on behalf of D.D. Diggs, for compensation beginning October 25, 2019, for all lost time, including overtime, and medical cost incurred, with all seniority and benefits unimpaired, account Carrier violated the current Signalmen’s Agreement, particularly Rules 1, 3, 45, 46, and 65, when Carrier’s Medical Department placed restrictions on the Claimant without allowing him to exercise his seniority, and refusing to accommodate him after disqualifying him from driving, resulting in a loss of work opportunity for the Claimant. Carrier’s File No. 1731883. General Chairman’s File No. S-1, 3, 45, 46-1833. BRS File Case No. 16347-UP. NMB Code No. 4.”

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 Claimant in the instant case was assigned to a Signalman position in Carrier's Signal Department. On January 31, 2019, the Carrier's Medical Department placed restrictions on him which prevented him from driving a Company vehicle and determined that they could not find a reasonable accommodation that would allow him to return to his previous position. The Claimant was able to secure a Signalman's position in Houston, Texas that didn't require him to drive one of the Carrier's vehicles.

On October 9, 2019, the Claimant was displaced from this Signalman position. The Claimant was unable to find another Signalman's position available for him to bump which did not require him to operate a company vehicle. Signal Director Mike Choate advised the Claimant he would have to displace an Assistant Signalman in order to keep working. On October 11, 2019, the Carrier placed the Claimant on a leave of absence.

The Carrier sent the Claimant to a new Fitness for Duty medical examination. On October 25, 2019, the Carrier sent the Claimant a letter stating it could not accommodate his restrictions and informing the Claimant he was restricted from holding any Signalman position due to his medical restrictions.

In a letter dated December 14, 2019, the Organization submitted a claim on behalf of the Claimant. The Carrier denied the claim in a letter dated February 5, 2020. Following discussion of this dispute in conference, the positions of the parties remained unchanged, and this dispute is now properly before the Board for adjudication.

The Organization contends that the Carrier violated the Agreement, particularly Rules 1, 3, 45, 46, and 65, when it improperly prevented the Claimant from exercising his seniority and sent him home without pay following a decision from Health and Medical Services to void his driving privileges.

Rule 46 provides, in part:

RULE 46 – DISPLACEMENTS

“B. An employee exercising his displacement rights under this rule must give notice of his intention to displace to the individual being displaced and to Non-Operating Personnel Services, the supervisor and local chairman of the district no later than during regular work hours of the regular work day immediately preceding the date of actual displacement. A displacement is not effective until the employee is

physically displaced. With the concurrence of management, employees who have been notified of their displacement may move prior to a physical displacement in order to avoid the loss of time.”

The Organization contends that the Claimant had seniority over ten employees that he could have displaced in order to keep working. The Organization contends that the Carrier is improperly and arbitrarily withholding the Claimant from service without providing the medical evidence that found him unable to return to duty. The Organization contends that the Carrier has failed to explain why the Carrier could accommodate the Claimant’s condition previously, but no longer. The Organization contends that the Carrier has failed to provide any reason for withholding the Claimant from service.

The Carrier contends that the Organization has failed to prove that the Agreement has been violated. The Carrier contends that the Organization has failed to set forth specific verifiable facts, probative evidence, applicable Agreement language and precedent that would satisfy its burden of proof.

The Carrier contends that the Claimant’s medical restrictions prevented him from being medically qualified for a number of positions, as he cannot operate any Carrier vehicle. Although the Claimant was previously able to secure a Signalman position that he could perform within his restrictions, when he was bumped from the assignment, he was unable to find another position that he could hold. The Carrier contends that the Organization has failed to show that there is a position that the Claimant can hold due to his lack of seniority and medical restrictions. Thus, he remains on a medical leave.

There is ample Board precedent establishing that the Carrier has the right to set reasonable medical restrictions, so long as the decision was not made in bad faith, arbitrary, or capricious. “It has long been held that ‘[q]ualification, fitness and ability to perform a job are determinations to be made by the Carrier, subject only to limited review by the Board as to whether the Carrier was arbitrary in its determination.’” Third Division Award 28138. *See also*, Third Division Award 35808. “It is not the function of the Board to substitute its judgment for that of the Carrier’s regarding medical determinations or the medical standards upon which it bases its decisions. That being said, the Carrier must have a rational basis for its determination and must make such determinations based upon a reasonable standard.” Third Division Award 43879.

In a rules case, the Organization bears the burden of proving that the Agreement was violated. Here, the Organization has not presented sufficient evidence showing that the Claimant was qualified to perform the work that he sought or that the Carrier's determination was arbitrary. Thus, the claim must be 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 21st day of April 2023.