

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44918  
Docket No. SG-47142  
23-3-NRAB-00003-210720**

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

**(Brotherhood of Railroad Signalmen  
PARTIES TO DISPUTE: (  
(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.A. Detmer, for compensation of 40-hours a week at his respective straight-time rate of pay in addition to any compensation received while held from service beginning June 6, through June 24, 2020; account Carrier violated the current Signalman’s Agreement, particularly Rules 5, 6, and 65, when the Claimant was exposed to Covid-19 while on duty, Carrier failed to properly compensate the Claimant and withheld him from service, resulting in a loss of earnings to the Claimant. Carrier’s File No. 1740327. General Chairman’s File No. S-5,6-55. BRS File Case No. 16425-UP. NMB Code No. 105.”**

**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.**

At the time this dispute arose, the Claimant was assigned to Gang 2675 in the Carrier's Signal Department. Gang 2675 worked with Gang 8876 on June 2, 2020. On June 10, 2020, a member of Gang 8876 tested positive for COVID-19. The Carrier instructed the members of the Claimant's gang not to report for duty and placed them on an involuntary Leave of Absence for 14 days, following the CDC guidelines. The Claimant did not perform service on scheduled workdays of June 10 through June 16, 2020, at the direction of the Carrier.

The Carrier's policy paid benefits and pay to employees who were sent home due to an exposure to Covid at work. The Carrier paid this benefit to the members of Gang 2675, with the exception of the Claimant. The Carrier did not pay the benefit to the Claimant, based on his self-report of Covid exposure.

In a letter dated July 24, 2020, the Organization filed a claim on behalf of the Claimant. The Carrier denied the claim in a letter dated August 6, 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 it is not challenging the Carrier's right to implement a policy to address the COVID-19 pandemic. However, the Organization contends that any unilaterally implemented policy must not conflict with the collective bargaining agreement and must be reasonable. The Organization contends that since the Carrier's policy as applied does not satisfy either of these criteria, that Claimant is entitled to relief.

The Organization contends that the Carrier violated Rules 5 and 6 of the Agreement when it unilaterally placed the Claimant on Involuntary Medical Leave of Absence, forcing him to miss work assignments without reimbursement. The Claimant was sent home due to working alongside another employee who tested positive for COVID-19. The Organization contends that the Carrier wrongfully failed to compensate the Claimant for the lost wages, despite providing benefits for other members of the Claimant's gang.

The Organization contends that it has established the Carrier's violation of Rules 5 and 6, and therefore, the Claimant is entitled to compensation under Rule 65. The Claimant should be made whole for all lost earnings he suffered from the Carrier's violations. The Claimant's earnings were diminished due to the Carrier's arbitrary and unreasonable decision to force him onto a Medical Leave of Absence and to deny him compensation paid to other similarly situated employees.

The Carrier contends that it had a clear obligation to protect the workforce and the public during the COVID-19 pandemic. Therefore, the Carrier contends, it created and implemented a policy which complied with the CDC guidelines. Under that policy, once the Claimant self-reported that he had tested positive for Covid, it was proper to place him on a medical leave of absence until he no longer posed a risk to his coworkers and the public.

The Carrier contends that when the Claimant self-reported his exposure, he was properly instructed to quarantine. The Carrier contends that whether the Claimant was entitled to pay under the Carrier's policy is a separate issue. The Carrier contends that the Claimant was not entitled to a 40-hour work week by the Agreement, as he was not able to work during the quarantine period.

The Carrier contends that CDC guidelines required those that were exposed to the virus, showing symptoms of the virus, or who tested positive for the virus to quarantine until the danger of spreading the virus to others had passed. The Carrier contends that although the Organization argues that the Claimant was willing and able to report to work, according to the CDC after he had tested positive for COVID-19, it was no longer safe for him to report to duty.

The Carrier contends that it had a good and sufficient reason to enforce the CDC guidelines: to prevent the spread of the coronavirus. The Carrier contends that it was reasonable to require that the Claimant quarantine after he reported that he had tested positive for COVID-19.

The Carrier contends that the Organization has not shown that there has been a violation of the Agreement. While employees are guaranteed 40 hours of work in a week, this provision is dependent upon the employee being able to perform service for those 40 hours. Here, so long as he was quarantining in accord with the CDC guidelines, the Claimant was not able to work, and was not entitled to any compensation. The Carrier contends that the Claimant was entitled to benefits from the Railroad Retirement Board. In addition, the Carrier compensated employees who were exposed to Covid while working with a coworker for up to 14 days, but the Claimant self-reported his exposure. The Carrier contends that the Claimant was not entitled to any additional compensation.

In Third Division Award 41393, this Board wrote,

It is well-established that the Carrier may withhold employees from work pending medical determination of their fitness for duty; indeed, some

Awards have indicated that the Carrier “. . . has a duty to remove from service employees who are physically unqualified for their jobs.” (Third Division Award 25186) The Organization is correct that the Carrier’s latitude to withhold employees is not unfettered, but that latitude is broad. The Carrier must have a “rational basis” for its determination, or “reason to believe the employee’s continued service may jeopardize his health or safety, or that of his fellow workers.” (Second Division Award 12193).

But while the Carrier has shown why it directed the Claimant to quarantine after exposure to a coworker who tested positive for Covid, it has not adequately explained why the Claimant was denied the same benefits that his fellow gang members received. The Claimant was told to quarantine on June 10, after having reported an exposure on June 2. On June 10, the entire gang was placed on MLOA after being exposed to a member of Gang 8876 who tested positive for Covid. Although the Claimant may have had other exposure, he was exposed to COVID-19 while on duty, just like the other gang members. The Carrier has not presented evidence that he was not exposed while on duty. He was entitled to receive the same benefits they did while he was prevented from returning to work.

**AWARD**

Claim sustained.

**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 21<sup>st</sup> day of April 2023.