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

Award No. 44926
Docket No. SG-47185
23-3-NRAB-00003-220076

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 K. Friedli, for $1,519.60 in lost wages and removal of the Maps 2 status, account Carrier violated the Signalmen's Agreement, particularly Rules 5, 6, and 65, when on July 30, 2020, it placed the Claimant on an involuntary leave of absence and instructed him not to report for duty without properly compensating him for lost work opportunities, then on August 6, 2020, Carrier cited the Claimant with a Rule 1.13 violation and forced him to sign a waiver under threat of more severe discipline. Carrier's File No. 1741199, General Chairman's File No. N0250, BRS File Case No. 5292, 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.

At the time this dispute arose, the Claimant was assigned as a Skilled Relief Signal Maintainer on Gang 3744 in the Carrier's Signal Department. On July 30, 2020, the Claimant reported to duty but was feeling sick. The Claimant's symptoms caused his coworkers to feel concerned, so they reported his condition to Health and Medical Services ("HMS"). When asked, the Claimant denied that his symptoms were caused by COVID-19 but stated that they were caused by allergies. The Carrier instructed the Claimant not to report for duty and placed him on a Medical Leave of Absence through August 6, 2020.

On August 6, 2020, the Carrier told the Claimant that he would be charged with failure to follow instructions due to not staying home when he was ill, as directed. The Carrier offered a waiver to the Claimant, and he signed it.

In a letter dated August 19, 2020, the Organization filed a claim on behalf of the Claimant. The Carrier denied the claim in a letter dated October 7, 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's application of its policy is inconsistent and is therefore, violative of the parties' Agreement. The Organization contends that the Carrier's policy cannot be shielded by the Center for Disease Control ("CDC") guidelines. The Organization contends that in practice the Carrier held employees out of service for different time periods, under the guise of following the CDC guidelines.

The Organization contends that the Claimant's rights under Rule 5 and 6 of the Agreement were violated, and thus, he was entitled to compensation under Rule 65. Rule 5 reads, in part, "There is established for all employees, subject to the exceptions contained in this agreement, a work week of 40 hours, consisting of five days of eight hours each, with two consecutive days off in each seven…" Rule 6 reads, in part, "The regularly established daily working hours will not be reduced below eight (8) per day, nor will the regularly established number of working days be

reduced below five (5) per week, except in weeks in which positions are established or abolished, unless agreed to in writing by a majority of the employees affected through their General Chairman…."

The Organization contends that the Carrier's policy has caused the Claimant to suffer lost earnings. The Organization contends that the amount of money that is provided in sickness benefits is less than the Claimant would have earned in his regular assigned position. The Organization contends that the Claimant must be made whole for the difference between what he received and what he would have earned for the period he was on an involuntary leave.

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 appeared at work with symptoms consistent with 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 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 exhibited symptoms of 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 to work exhibiting symptoms of Covid.

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 did not indicate that he was exposed while on duty. The Carrier contends

that the Claimant was not entitled to any additional compensation.

The Carrier contends that the Board should not entertain the request to remove the discipline notation. The Carrier contends that the Claimant chose to sign the waiver and is now precluded from challenging it.

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).**

In Third Division Award 40839, an on-property award, this Board wrote that the Carrier has the right to establish medical standards to assure that an employee can perform his job safely, so long as the review of the employee's fitness is made within a reasonable time. "What constitutes an excessive delay depends on the facts and circumstances of each case." *Id.*

Under the facts and circumstances of this case, we find that the Carrier did not delay excessively in returning the Claimant to active duty after he reported to work exhibiting symptoms consistent with COVID-19. The period of quarantine was based on the date of exposure and conformed with the CDC guidelines then in place. Given the risks associated with the novel coronavirus, it was not unreasonable for the Carrier to delay the Claimant's return until he had completed the quarantine period.

The Organization complains that the Carrier imposed different quarantine periods on different employees. The Carrier responds that the quarantines were based on each employee's circumstances, taking into account the date of exposure, the likelihood of re-exposure, the persistence of symptoms, or other factors relevant to the risk of infection. The Organization has not demonstrated that the factors considered in determining the quarantine period were unreasonable, or that the Carrier failed to have a rational basis for its determinations.

The Carrier was justified in withholding the Claimant from service for the period of the quarantine and the CDC guidelines rendered him unfit to perform his duties. Therefore, the Claimant is not entitled to compensation for the time he was in quarantine due to an exposure to COVID-19.

With respect to the waiver, the Claimant voluntarily signed a waiver accepting the disciplinary action. This Board has no authority to invalidate that agreement.

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.