

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45025
Docket No. MW-47536
23-3-NRAB-00003-220299**

The Third Division consisted of the regular members and in addition Referee Barbara C. Deinhardt when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division –
(IBT Rail Conference**

PARTIES TO DISPUTE: (

(National Railroad Passenger Corporation (AMTRAK)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when, beginning on October 3, 2019, it removed Mr. V. Fomin-Nazarov from service (System File BMW-158981-TC AMT).**
- (2) The claim as presented by Vice Chairman L. Buchanan, on June 22, 2020, to Division Engineer R. Puciloski shall now be allowed as presented because said claim was not disallowed by Division Engineer Puciloski in accordance with Rule 64.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimant V. Fomin-Nazarov shall receive compensation for all lost straight time and overtime hours, per diem, differential, all lost credits and benefits, and payable at the Claimant’s respective foreman rate for the time period between October 4, 2019 and May 5, 2020. These are the earnings Claimant would have received had the carrier not improperly suspended Claimant from service.”**

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 or about September 30, 2019, the Claimant was involved in an incident that caused the Carrier to direct him to be tested for drugs and alcohol. On October 3, 2019, the Carrier informed the Claimant via letter that he was being held out of service “pending clearance from the medical department following a fitness for duty examination.” He underwent this examination and on October 24, 2019, the Carrier issued the Claimant another letter notifying him that he was medically disqualified. The Claimant was required to take certain steps to be cleared to return to work. He eventually completed such steps and returned to work on May 5, 2020. The Organization filed a claim on June 22, seeking pay from October 4 to May 5. The Carrier denied the claim as untimely and on the merits.

The Organization argues that the Carrier’s denial letter was mailed a day late. In addition, the Organization asserts that the Claimant was not actually medically disqualified but instead was being held out of service pending medical evaluation and clearance and he was entitled to be paid. Finally, the Organization states that the claim was not untimely because it was filed within 60 days of the time the Claimant was returned to service.

According to the Carrier, the Claimant was not disciplined. He was withheld from service for medical reasons. Further, the Organization’s claim was untimely, as it was not filed until many months after the Claimant was withheld from service after being found medically disqualified. Finally, even if there were a violation, there is no remedy because the Claimant was not cleared to work during the time claimed by the Organization.

Upon a review of the record as a whole, the Board finds that this claim is not a discipline claim and so the burden of proof lies with the Organization. The Organization has not met its burden of proof.

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 7th day of September 2023.