

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 45261  
Docket No. SG-47629  
24-3-NRAB-00003-220410**

**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: (  
(BNSF Railway Corporation**

**STATEMENT OF CLAIM:**

**“Claim on behalf of J. Mullen, for 18 hours of compensation at his respective rate of pay, account Carrier violated the Signalmen’s Agreement, particularly Rule 3A, when on November 12, 2020, Carrier failed to pay the Claimant for lost work opportunities. Carrier’s File No. 35-21-0024, General Chairman’s File No. 20- 141-BNSF-129-S, BRS File Case No. 5278, NMB Code No. 309 - Contract Rules: Protection.”**

**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 is assigned as a Shop Signalman in the Carrier’s Signal Department. On October 28, 2020, the Claimant informed his manager that he was going home because he did not feel well. The next day, the Claimant contacted the Carrier’s Medical Department and notified them that he intended to take a COVID-19 test. The Claimant was informed that regardless of the results of the test, he would be**

required to quarantine for ten days. The Claimant tested negative for COVID-19 and remained asymptomatic but was held from service until November 9, 2020.

In a letter dated December 31, 2020, the Organization filed a claim on behalf of the Claimant. The Carrier denied the claim in a letter dated February 18, 2021. 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 Rule 3A of the controlling Agreement when it improperly placed the Claimant on an involuntary Medical Leave of Absence following a directive given by Carrier to the Claimant to not report for duty. The Organization contends that the Carrier should now compensate the Claimant for 24 hours at the straight time rate of pay for a lost work opportunity. The Organization contends that the Carrier's suggestion that the Claimant could have been fully compensated by using vacation time was improper.

The Organization contends that the Carrier's decision to place the Claimant on an involuntary Medical leave denied the Claimant his 40-hour workweek. The Claimant initially reported not feeling well but tested negative for COVID and remained asymptomatic. The Claimant did not report close contact with anyone who had tested positive for COVID.

The Organization contends that the Carrier cannot justify its actions based on policy in accordance with CDC guidelines. The Organization contends that the Carrier may not use CDC guidelines to circumvent the controlling Agreement. The Organization contends that the Carrier's right to force an involuntary Medical Leave of Absence is not unfettered. The Organization contends that the Carrier failed to adhere to its own policy.

The Carrier contends that its first priority is the safety and wellbeing of its entire workforce. The Carrier contends that since the beginning of the COVID pandemic, it has continued to actively monitor the situation and to follow the guidance issued by the CDC. The directive to the Claimant was in compliance with the state, local, and federal public health guidelines and recommendations.

The Carrier contends that it issued guidelines on March 22, 2020, for responding to COVID-19 cases in the workplace. The guidelines provide that anyone perceived to be in close proximity to a positive COVID-19 case could be quarantined for up to 14 days. Such employees are entitled to four days of compensation, which was paid to the

**Claimant. In addition, they may be eligible for additional benefits under the Railroad Retirement Board policies. In addition, attendance policies were relaxed during the period of quarantine.**

**The Carrier contends that the Claimant was withheld from service in order to comply with local, state, and federal guidelines, after a federal emergency was declared. The Carrier contends that in emergency situations, Carriers have been granted greater latitude with respect to application of the rules.**

**The Carrier contends that Rule 3(A) is inapplicable here, as the Claimant was not shorted any work opportunities, as he was not available to work his 40-hour work week.**

**In Third Division Award 41393, the 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, 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 feeling unwell with symptoms similar to those of COVID-19. The period of quarantine was based on the date of exposure and corresponded 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 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 a potential exposure to COVID-19.

**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 14<sup>th</sup> day of May 2024.