

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 45267
Docket No. SG-47189
24-3-NRAB-00003-220092

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 Company

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 R. Vasquez, for re-examination and return to service with compensation for all lost time, including overtime and with benefits unimpaired, account Carrier violated the current Signalmen’s Agreement, particularly Rule 52, when, on July 29, 2019, it improperly withheld the Claimant from service and continued to request medical information although the Claimant was cleared to return to service. Carrier’s File No. 1741143, General Chairman’s File No. S52(B)-66, BRS File Case No. 4617, 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 began in the Carrier’s service on October 14, 2002. The

Claimant was holding the position of Electronic Tech Inspector on Gang No. 2346 at the time of the events here. In June 2019, the Claimant was involved in a serious off-duty motorcycle accident. The Claimant's physician cleared him to return to work without restrictions on July 29, 2019. On July 24, 2020, the Carrier's Chief Medical Officer found that the Claimant's medical restrictions, which the Carrier was unable to accommodate, would be in place for at least five years from the date of the accident.

In a letter dated August 17, 2020, the Organization filed a claim on behalf of the Claimant, seeking a reexamination pursuant to Rule 52(B). 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 final adjudication.

The Organization contends that the Claimant's physician cleared him to return to service without restrictions on July 29, 2019, but the Carrier continues to refuse to return the Claimant to service. The Organization contends that the Carrier's physician did not evaluate the Claimant but based his opinion on medical comments. The Organization contends that the Claimant was entitled to a re-examination under the controlling Agreement.

The Organization contends that the Carrier has abused its discretion by placing arbitrary restrictions on the Claimant, rendering him essentially disqualified, without performing a re-examination at the Claimant's request.

The Organization contends that while the Carrier has the right and responsibility to set proper and reasonable medical standards for its employees, it bears the burden of having a reasonable basis for removing an employee from service. The Carrier must ensure that employees are examined and returned to service as soon as possible. The Carrier bears the "risk of fallibility" if its judgment that an employee is not fit for service turns out to be wrong.

The Organization contends that the Carrier violated the controlling Agreement when it arbitrarily withheld the Claimant from service after his own physician released him to return to work without restrictions. The Organization contends that the Claimant should be returned to work and made whole.

The Carrier contends that the Organization failed to timely file its claim within 60 days of the date which forms the basis for the grievance. The Carrier contends that the Claimant was informed of his restrictions on August 14, 2019, and did not file this claim within 60 days, as required by Rule 56A. The Carrier contends that the

Organization has filed multiple claims regarding this same matter, so this duplicate claim must be dismissed.

The Carrier contends that arbitral precedent makes clear that the Carrier has the managerial right and obligation to set and enforce medical workplace standards. The Carrier must ensure the fitness and ability of its employees to safely perform their assigned duties.

The Carrier contends that while the Claimant's physician provided a general release to return to work, the Claimant's medical records established that the Claimant's condition elevated his risk of sudden incapacitation, providing a valid basis to withhold the Claimant from service.

Rule 52 – PHYSICAL EXAMINATIONS provides,

(B) Requesting Re-Examination:

If the employee feels his condition does not justify removal from the service or restriction of his rights to service, he may request re-examination. Such request must be submitted by him or his representative within thirty (30) days following notice of the disqualification, unless extended by mutual agreement between the General Chairman and Labor Relations. may be given further examination as follows:

1. The employee will be re-examined by a physician designated by the Carrier and a physician of the employee's choice who will both be graduates of a Class (A) medical school of regular medicine. If the two physicians agree that the man is disqualified, their decision is final; if they agree the man is qualified, he will be returned to service.
2. If the two physicians fail to agree, the employee's physician and the Carrier's physician will select a third physician who will be a practitioner of recognized standing in the medical profession; and, where any special type of case is involved, must be a certified specialist in the disease or impairment which resulted in the employee's disqualification. The board of physicians thus selected will examine the employee and render a report of their findings within a reasonable time, not exceeding 30 days after their selection, setting forth the employee's physical condition and their conclusion as to whether he meets the requirements of the Carrier's physical

examination rules. The 30-day period may be extended by mutual agreement between the General Chairman and Labor Relations...

While the Organization concedes that it has filed other claims on behalf of the Claimant arising out of this situation, this is the first claim considered by this Board. There is no evidence that another claim granted or denied the relief sought by this claim. We find that the claim should not be dismissed as duplicative of another. In addition, the claim is not untimely, as the Claimant's request for reexamination continues to be denied.

The Carrier made a determination that the Claimant's condition justified his removal from service, contrary to the conclusion of the Claimant's physician. The Claimant requested a re-examination, but the Carrier did not honor the Claimant's request. Rule 52(B) makes clear that if the employee believes that his condition does not justify removal from the service or restriction of his rights to service, he may request and is entitled to a re-examination. The Carrier acknowledged that no re-examination was performed.

After the July 24, 2020, notice that the Claimant's return-to-work could not be accommodated due to the medical restrictions placed on him, the Organization requested a re-examination. The Claimant was entitled to a re-examination to determine whether the medical restrictions were necessary. The Carrier is ordered to provide a re-examination as set forth in Rule 52(B).

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 24th day of July 2024.