

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45270
Docket No. SG-47376
24-3-NRAB-00003-220416**

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 W. Turner, for compensation for all lost work days beginning June 18, 2021, to July 2, 2021, when he was returned to work, account Carrier violated the current Signalmen’s Agreement, particularly Rules 5 and 65, when Carrier arbitrarily removed the Claimant from service and failed to provide in writing the specifics and concerns, Carrier further failed to provide in writing requirements for the Claimant to return to service, and continued to request additional information, thereby denying the Claimants return to service. Carrier’s File No. 1759682, General Chairman’s File No. VGCS-5-191, BRS File Case No. 5405, NMB Code No. 103 - Out-of-Service Discipline: Safety/Operating Rules.”

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 of the events herein, the Claimant was assigned as a Signal Maintainer in the Carrier's Signal Department. On June 17, 2021, the Claimant reported to Manager Woolf that he experienced "blurry vision" while performing yearly inspections. The Manager dispatched two maintainers to take the Claimant and his truck home, and to complete his inspection tests. The Carrier removed the Claimant from service pending a fitness for duty examination.

The Claimant was examined by both an eye physician and his family physician and was cleared to return to work on June 18, 2021. The Claimant was returned to service on July 2, 2021, three days after he provided the information that demonstrated that his condition had improved.

In a letter dated July 2, 2021, the Organization filed a claim on behalf of the Claimant. The Carrier denied the claim in a letter dated August 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 final adjudication.

The Organization contends that the Carrier arbitrarily removed the Claimant from service on June 17, 2021, despite the Claimant's doctor clearing him to return to work, and neither disqualified the Claimant nor returned him to service. The Organization contends that the Carrier was required to clearly state what the Claimant needed to provide in order to be returned to service. The Organization contends that Board precedent makes clear that the Carrier may not arbitrarily remove an employee from service nor keep him out of service for an unnecessarily prolonged period of time. Third Division Award 41393.

The Organization contends that the Claimant complied with the Carrier's requirements and was fit for duty, yet the Carrier arbitrarily held the Claimant from service and that the Carrier bears the "risk of fallibility" under such circumstances. The Organization contends that per Rule 65 of the controlling agreement, the Claimant should be compensated for his 40-hour workweek from June 17, 2021, through July 2, 2021.

The Carrier contends that the Organization has failed to prove a violation of the controlling Agreement. The Carrier contends that the record clearly demonstrates a valid basis to review the Claimant's health condition, due to several instances with his vision, including a report by the Claimant that he was going to the emergency room to have it checked. The Carrier contends that it has an obligation to ensure that the Claimant was not jeopardizing his own or others' safety.

The Carrier contends that it did not delay review of the Claimant's medical records or making a determination regarding his return to service. The Carrier denies that its nurse certified that the Claimant could return to work. The Carrier contends that the Claimant was never medically disqualified but was removed from service pending a fitness for duty review. The Carrier contends that it has the managerial right to set and enforce medical workplace standards.

The Carrier contends that the Organization's claim for compensation for the Claimant should be denied, as the Organization has not presented evidence that the Claimant was fit and able to perform his duties in the claimed period. Once the Claimant was cleared to return to duty after an MRI was conducted, the Carrier returned him to duty.

The parties' Agreement, at Rule 52 and Rule 65, provides, in part:

"RULE 52 - PHYSICAL EXAMINATIONS

A. Physical Disqualification

An employee subject to the Agreement between the parties hereto who is disqualified as a result of an examination conducted under the Carrier's rules governing physical or mental examinations will be notified in writing, with copy to his General Chairman of his disqualification and will be carried on leave of absence.

RULE 65 - LOSS OF EARNINGS

An employee covered by this agreement who suffers loss of earnings because of violation or misapplication of any portion of this agreement will be reimbursed for such loss."

There is ample Board precedent establishing that the Carrier has the right to set reasonable medical restrictions, so long as the decision was not made in bad faith, arbitrary, or capricious. "It has long been held that '[q]ualification, fitness and ability to perform a job are determinations to be made by the Carrier, subject only to limited review by the Board as to whether the Carrier was arbitrary in its determination.'" Third Division Award 28138. See also, Third Division Award 35808. "It is not the function of the Board to substitute its judgment for that of the Carrier's regarding medical determinations or the medical standards upon which it bases its decisions. That being said, the Carrier must have a rational basis for its determination and must make such determinations based upon a reasonable standard." Third Division Award 43879.

The Organization complains that the Claimant was not provided with the reasons for removal in writing, in violation of Rule 52. But, as the Carrier pointed out, Rule 52 only applies to medical disqualification and the Claimant was never disqualified. The Carrier sought confirmation that the Claimant was fit for duty. It was their managerial right to do so.

The record does not demonstrate that the Carrier delayed excessively in returning the Claimant to service after it reasonably raised concerns about his fitness for duty. The Claimant expressed significant concerns after several incidents of “blurry vision.” The Carrier’s determination was not arbitrary.

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 24th day of July 2024.