

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 45275  
Docket No. SG-47572  
24-3-NRAB-00003-220735**

**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 M.W. Hughes, for 40 hours at his respective straight-time rate of pay and return of his 5 vacation days, account Carrier violated the current Signalmen’s Agreement, particularly Rules 5 and 65, when, from August 5, 2021, through August 13, 2021, it improperly withheld the Claimant from service. Carrier’s File No. 1762275, General Chairman’s File No. VGCS-5-209, BRS File Case No. 5541, NMB Code No. 307 - Contract Rules: Medical/FFD.”**

**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 was assigned to an Electronic Technician Inspector position headquartered in Portland, Oregon. On August 4, 2021, the Claimant advised his**

Supervisor that he was taking a week of vacation to see his eye doctor due to concerns with his vision. The Carrier placed the Claimant on an involuntary medical leave of absence (“MLOA”) effective August 5, 2021 and requested a fitness for duty evaluation. The Claimant was examined on August 6, 2021, and cleared to return to work without restriction on August 13, 2021.

In a letter dated August 16, 2021, the Organization filed a claim on behalf of the Claimant. The Carrier denied the claim in a letter dated October 8, 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 August 5, 2021, after he requested to use vacation time. The Organization contends that the Carrier failed to promptly return the Claimant to work and continued to deny his right to work. The Organization contends that the Claimant had complied with the Carrier’s requirements and was fit for duty.

The Organization contends that the Carrier denied the Claimant his 40-hour workweek in violation of Rule 5 when it arbitrarily withheld him from service from August 5 to August 13, 2021. The Organization contends that the Claimant never requested a MLOA but requested to use vacation. 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. Third Division Award 41393.

The Organization contends that the Carrier arbitrarily held the Claimant from service after he was deemed fit to return 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 credited the five vacation days he used and 40 hours for the lost work opportunity from August 5 to August 13, 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 have it checked by a doctor. 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 its review of the Claimant's medical records or its determination regarding whether the Claimant could return to service, as the Claimant's medical information was received on August 9 and the Claimant was returned to service on August 13. 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.

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.

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**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 is 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 Claimant expressed significant concerns regarding his vision. 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 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 24<sup>th</sup> day of July 2024.