

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45276
Docket No. SG-47573
24-3-NRAB-00003-220846**

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 T. Wooten, to be returned to work and paid for lost earnings, with benefits and seniority unimpaired beginning October 29, 2021, and continuing until he is returned to service; account Carrier violated Rule 52 of the Agreement when on October 29, 2021, it improperly removed him from service and failed to provide him with notification in writing of the reasons for his removal from service. Carrier’s File No. 1766759, General Chairman’s File No. S-52-229, BRS File Case No. 5549, 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 as a Skilled Signal Maintainer in the Carrier’s

Signal Department. On October 18, 2021, the Claimant completed a Department of Transportation (“DOT”) physical. The Carrier’s nurse took exception to the Claimant’s results and removed him from service on October 29, 2021. The Claimant was found not fit for duty on November 12, 2021, pending a fitness for duty examination. The Carrier sought adequate medical records to evaluate whether the Claimant could work without medical restrictions. The Claimant was returned to service on January 14, 2022.

In a letter dated November 11, 2021, the Organization filed a continuing claim on behalf of the Claimant. The Carrier denied the claim in a letter dated December 20, 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 October 29, 2021. 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 neither disqualified the Claimant nor returned him to service and did not provide in writing the reasons for the Claimant’s disqualification. 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. 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 compensated for the lost work opportunity from October 29, 2021, to January 14, 2022.

The Organization contends that the Carrier medically disqualified the Claimant based on the results of a DOT physical he should not have been subjected to. The Carrier was informed that the Claimant does not operate a DOT vehicle but the Carrier failed to promptly return the Claimant to work and continued to deny him his right to work.

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 conditions, due to multiple serious health conditions reported during his annual examination. 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 never disqualified the Claimant from service, but removed him pending a medical fitness for duty evaluation to ensure that he could safely perform the duties of his assignment.

The Carrier contends that it did not delay its review of the Claimant's medical records or making a determination regarding his return to service. 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 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 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 Carrier sought confirmation that the Claimant was fit for duty after a medical examination revealed multiple serious health conditions. : The Organization alleges 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 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 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.