Form 1 **NATIONAL RAILROAD ADJUSTMENT BOARD**
THIRD DIVISION

Award No. 45340
Docket No. SG-47749
25-3-NRAB-00003-230105

The Third Division consisted of the regular members and in addition Referee Michael D. Phillips when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Canadian Pacific Railway

STATEMENT OF CLAIM:

"Claim on behalf of K. Shankle, for 80 hours at his respective straight - time rate of pay plus Skill Rate, 8 days per diem expense allowance, 2 nights per diem dinner allowance, and weekend travel allowance for 668 miles; account Carrier violated the Signalmen's Agreement, particularly Rules 17 and 24, when on September 27 through October 7, 2021, it placed the Claimant on an involuntary leave of absence and instructed him not to report for duty without properly compensating him for lost work opportunities. Carrier's File No. 2021-00025246, General Chairman's File No. 2021-00025246, BRS File Case No. 5587, NMB Code No. 308 - Contract Rules: Pay/Allowances/Penalty."

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.

From September 27, 2021, through October 7, 2021, Claimant K. Shankle was instructed to self-quarantine for 14 days due to having worked with another employee

who tested positive for COVID-19. During that period the Claimant was not permitted to work, and he was not compensated.

The Organization initiated the instant claim on the Claimant's behalf, contending that the Carrier had improperly prevented the Claimant from working a forty-hour work week as provided for in Rule 17 of the applicable agreement and had denied him expenses he was entitled to under Rule 24. It stated that, while the Claimant had been fit and available for work, the Carrier's COVID-19 response team had instructed him to quarantine himself during the period in question, resulting in a wage loss of 80 hours. The claim sought pay for the time the Claimant was not allowed to work, as well as per diem and travel allowances.

The Carrier denied the claim, stating that it was complying with Center for Disease Control (CDC) guidelines put in effect to address the ongoing COVID-19 pandemic. It noted that the Claimant had been exposed to someone who was positive for the Coronavirus, and it added that the Claimant had been provided instructions on seeking RRB sickness benefits and insurance benefits.

The Organization submitted an appeal, stating that the Carrier was incorrect in suggesting that the Claimant had a personal ailment. It asserted that the Claimant did not elect to refrain from coming to work for 14 days, but that it was the Carrier who instructed the Claimant to quarantine himself. The Organization stated that the onus thus was on the Carrier to compensate the Claimant, as he had no choice in the matter.

The Carrier denied the appeal, again stating that it complied with CDC guidelines once it was determined that the Claimant had been exposed to someone who was positive for COVID-19. The Carrier averred that it had an obligation to other employees to ensure that they have a safe work environment.

The parties discussed the matter in conference, which the Carrier documented in additional correspondence. It emphasized that the parties were in the middle of a global pandemic, which was impacting multiple facets of life, and that the effects were widespread, ongoing, and tragic. The Carrier cited the CDC guidelines which explained the necessity of quarantine to help prevent the spread of disease, which included staying home, separating from others, and monitoring health. It also noted that the guidelines included advice that spread of disease can occur before a person knows they are sick or if they are infected with the virus without feeling symptoms. The Carrier asserted that the Claimant was properly removed from service to self-quarantine in an effort to avoid potentially spreading the virus to fellow colleagues and their families, and the

community at large. The Carrier supported its argument with citations to CDC data reporting the increasing numbers of COVID-19 cases. It maintained that it would be derelict in its duties if it permitted employees exposed to COVID-19 to continue working and endangering the welfare of other employees, customers, and communities.

The parties concluded the claim handling through the on-property appeal process, but they were unable to resolve it. The matter now comes to us for resolution.

This is not a case of first impression. Similar, if not identical, issues were raised and considered in several recent cases involving these parties and this Neutral, resulting in NRAB Third Division Award Nos. 44874, 44864, and 44862, among others. We addressed the parties' arguments in Award No. 44864 as follows:

> **"We have thoroughly reviewed the parties' arguments, correspondence and citations of authority, and we find that the Organization has not met its burden of establishing an agreement violation in these circumstances. We do not take issue with the principles set forth in the awards cited by the Organization, which place the 'risk of fallibility' on the Carrier when it makes a determination to withhold an employee from service for medical concerns. In applying those principles to the instant case, however, we do not believe that the Carrier acted arbitrarily or unreasonably in withholding Claimant from service for the period in question.**
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> **The award authority cited by the Organization reasonably holds that, if a supervisor or other management official believes an employee is not physically qualified to perform service, and the evidence reveals that such belief was unfounded, the employee should not suffer a loss based on the manager's erroneous belief. The awards also stand for the principle that any medical review and determination of an employee's fitness to return to work must be made in a reasonable amount of time.**
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> **Here, we find no indication that the Carrier's determination Claimant should be withheld from service was arbitrary or unreasonable, nor do we find any indication that Claimant's return to service was unnecessarily delayed. Unlike typical cases involving such issues, this is not an instance where a manager with no medical qualifications observes an employee having some apparent difficulty performing a work task and takes it upon himself to remove the employee from service pending a**

> **medical exam. To the contrary, we believe that the Carrier's decision in this case was motivated by a reasonable attempt to comply with medical guidance regarding how to prevent spread of an unprecedented and debilitating pandemic after Claimant reported potential off-duty exposure to COVID-19. There appears to be no dispute that the Carrier's actions were consistent with advice from the CDC on how to address persons who reported experiencing symptoms consistent with COVID-19 or who reported exposure to other individuals who may have been infected, and there is no indication that the timeframe involved was in excess of that prescribed by the CDC guidelines."**

We find no reason to reach a different conclusion here. As we stated in that award, we are not unsympathetic to the circumstances of an employee who lost wages during the pandemic due to having to quarantine. We are also aware that some employers handled such circumstances differently. We are constrained, however, to determine if an agreement violation has been established when the Carrier required the Claimant to quarantine and did not compensate him when he could not work, not to say what we think would be considerate or charitable on the part of the Carrier. We do not find that a violation has been established here, and therefore, we must deny the claim.

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 31st day of October 2024.