

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 45416  
Docket No. SG-47284  
25-3-NRAB-00003-220209**

**The Third Division consisted of the regular members and in addition Referee Edwin H. Benn 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.B. Burkett, for re-examination, and returned to his former position with compensation for all lost time, including overtime, account Carrier violated the current Signalmen’s Agreement, particularly Rules 52, 53, and 65, when, on August 24, 2020 [September 9, 2020], it improperly medically disqualified and withheld the Claimant from service. Carrier's File No. 1742232. General Chairman's File No. W-52-65-0106. BRS File Case No. 4697. NMB Code No. 307.””**

**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 relevant time, the Claimant was an Electronic Technician Inspector on Gang 1482.**

After being withheld from service, the Claimant's physician cleared the Claimant to return to work effective August 7, 2020. However, the Claimant's personal medical records showed that the Claimant had medical conditions including a right thalamic stroke which the Carrier asserts had not been previously reported to the Carrier and was a condition which required a one-year sudden incapacitation restriction. See Organization Exhibit 1 at p. 9 (the Claimant's progress note from Mercy Medical Center dated May 14, 2020 notating a "[c]linical presentation suggestive of small vessel stroke/TIA, and MRI suggestive of possible R thalamic stroke"). Restrictions were placed on the Claimant by the Carrier precluding him from driving Carrier vehicles or performing safety sensitive work.

The parties advise that the Claimant's one-year restriction has now lapsed.

According to the Organization, the Carrier violated the applicable rules when it first refused to conduct a re-examination of the Claimant as he requested under Rule 52(B) of the Agreement.

In pertinent part, Rule 52 provides for establishment of a medical board culminating in a decision by a neutral physician. Rule 52(B) is a beginning step in the process:

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. He may be given further examination as follows:

\* \* \*

It is fundamental that fitness of an employee to perform duties of a job is the Carrier's right, subject only to a showing that the Carrier's decision was arbitrary. See First Division Award 28138:

"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." See Third Division Award 35808. See also, Third Division Award 29035 ("There is no question that the Carrier does have the right to establish the minimum medical standards for its employees"); Third Division Awards 39940 and 39939 ("It is the Carrier's managerial

function to determine the fitness of its employees”); Public Law Board No. 6459, Award 9 (“The right of the Carrier to determine the physical and psychiatric fitness of its employees and to withhold from service those who do not measure up is too well established to require citation of authority”).

\* \* \*

A disqualification decision made by the Carrier is not arbitrary if there is a rational basis for the decision. See Third Division Award No. 35808, *supra*:

The Organization's arguments that the Claimant was improperly disqualified go to whether the decision made by the Carrier was a correct one. At best, the Organization's arguments make the Carrier's decision a debatable one. But, showing that a determination was debatable, even wrong, does not equate with a demonstration that the decision was arbitrary. A rational basis exists for the Carrier's determination. That determination was therefore not arbitrary. In light of the limited review standard, that is as far as this inquiry can go.”

Assuming that the Claimant requested a re-examination, because the record sufficiently demonstrates from the Claimant’s personal medical records that the Claimant suffered conditions including a right thalamic stroke which required a one-year sudden incapacitation restriction, the asserted denial of the Claimant’s re-examination request makes this claim moot. Under the Carrier’s standards which are not arbitrary and because of the Claimant’s personal medical records, any re-examination would not have permitted the Claimant to perform his duties because of the one-year restriction. Because of what is shown in the Claimant’s personal medical records, the re-examination would not have changed that result.

And while the Claimant’s physician was of the opinion that the Claimant could return to work effective August 7, 2020, the Carrier did not share that opinion – again, based on the Claimant’s personal records. Given the Carrier’s managerial right to determine employees’ fitness and to determine when employees can return to work and absent a showing by the Organization of arbitrary decision making by the Carrier, the fact that the Claimant’s physician was of the opinion that the Claimant could return to work on August 7, 2020 does not bind the Carrier. See First Division Award 28138, *supra* (“... the position urged by the Organization that effectively gives the Claimant’s physician the ability to make fitness determinations which are binding on the Carrier results in the same forfeiture of that core managerial right ....”).

Based on the above, the claim lacks merit and shall be denied.

**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 13<sup>th</sup> day of February 2025.