

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45423
Docket No. SG-47917
25-3-NRAB-00003-230425**

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 L. Martinez to be returned to service and compensated for lost wages from August 29, 2022, through November 27, 2022; account Carrier violated Rules 5 and 52 of the Agreement when it failed to notify the Claimant in writing the reasons for the disqualification and failed to return to him to service in a timely manner after being cleared by his Physician on August 29, 2022. Carrier’s File No. 1779251, General Chairman’s File No. S99-5,52-349, BRS File Case No. 6193, 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 had a surgical procedure reconstructing a ligament in his left ankle due to ankle instability which caused the Carrier to withhold him from service.

The record shows that on August 30, 2022, the Claimant's approved leave for his surgery ended. Carrier Exhibit C2 at 5. After extension of the leave, on September 19, 2022, the Claimant was informed that further documentation was needed before he could return to work. Id. at 6, 7. As of September 23, 2022, the Carrier was "awaiting additional medical records from employee" and on October 3, 2022, HMS had "contact with employee." Id. at 7.

Carrier internal correspondence dated October 4, 2022 noted that the Claimant "... is currently in Show Cause process due to documentation required for return/extension having not been received ... was informed by FFD, via telephone call, on 09/19/22 of remaining documentation required ... [o]n 10/03/22 [the Claimant] called the COVID hotline to ask where to send the updated records and was provided guidance at that time." Organization Exhibit 1 at 16.

On October 12, 2022 and at the Claimant's request, the Claimant's medical records were forward by the Organization to the Carrier. Organization Exhibit 1 at 25. On October 27, 2022, as part of the Organization's inquiry on the status of returns for several employees, the Organization's inquiry concerning the Claimant noted that the Claimant has been trying to return, with a response from the Carrier on October 28, 2022 that the Claimant has been spoken to and "... he understands what is needed for HMS to clear him and return to work." Id. at 26-27.

According to the Carrier, the Claimant was released to return to work with no restrictions, effective November 17, 2022. Organization Exhibit 1 at 21. According to the Organization, the Claimant was returned to work on November 27, 2022. Organization Submission at 3.

In its October 5, 2022 letter, the Carrier refers to "... the statement from HMS employee Rebecca Patrick, of which clearly indicates that the Claimant has been informed multiple time[s] (by FFD and when he called the COVID hotline) of what is required of him to return to full and active duty" and asserts ... [a]gain, the only one to blame for any delays would be the Claimant himself." Organization Exhibit 1 at 11.

Patrick's letter referred to by the Carrier is dated October 4, 2022. Organization Exhibit 1 at 16. But as noted above, on October 12, 2022 and at the Claimant's request,

the Claimant's medical records were forward by the Organization to the Carrier. Organization Exhibit 1 at 25.

Following the October 12, 2022 forwarding of the Claimant's medical records by the Organization, there is nothing in this record to show what, if anything, was deficient in those records or what reasons the Carrier had for no further action until the Claimant was returned to service. This Board has the Carrier's October 27, 2022 response to the Organization's inquiry about the Claimant (id. at 26 – "I have spoken with Mr. Martinez, he understands what is needed for HMS to clear him to return to work") and a reference that the Claimant is not being held out for a sleep study result (id. at 29). However, there is nothing of substance explaining what was missing from the Claimant's records after those records were forwarded to the Carrier by the Organization on October 12, 2022 that can reasonably be relied upon by the Carrier to keep the Claimant from returning to work as requested. Aside from general exchanges that the Claimant has been spoken to and that he was not being held out for a sleep study, this Board is left without much to determine why the Carrier continued to hold the Claimant out of service following the Organization's October 12, 2022 forwarding of the Claimant's records. From this record, the next correspondence of substance was the Carrier's November 17, 2022 release of the Claimant to return to work. Id. at 21.

Therefore, what is not explained by the Carrier is the delay between the October 12, 2022 submission of the Claimant's records until the Claimant's return to duty in November 2022. It is fundamental that fitness of an employee to perform duties of a job is the Carrier's managerial right, subject only to a showing that the Carrier's decision was arbitrary. First Division Award 28138 and awards cited. Without anything of substance in this record to explain why the Claimant was held out of service after the October 12, 2022 submission of his medical records, we find that lack of an explanation for the delay to be arbitrary – no reason is an arbitrary reason. As such, we shall sustain the claim for that period the Claimant was held out of service from October 12, 2022.

As a remedy, the Claimant shall be compensated for the period from October 12, 2022 until his return to service in November 2022.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 13th day of February 2025.