

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 45425  
Docket No. SG-48303  
25-3-NRAB-00003-230754**

**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 C. Richardson, for reinstatement of his truck driver qualification, and compensation for the differential allowance for each day he is disqualified; account Carrier violated the current Signalmen’s Agreement, particularly Rules 3, 40, and 52, when, on February 23, 2023, it arbitrarily disqualified the Claimant as a truck driver and failed to apprise the General Chairman of such disqualification in writing. Carrier’s actions have resulted in a loss of work opportunity to the Claimant. Carrier’s File No. 1785760, General Chairman’s File No. S206-52-394, BRS File Case No. 6360, 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 been diagnosed with severe obstructive sleep apnea. Because the Claimant discontinued use of a CPAP (continuous positive airway pressure) machine to aid sleep (the Claimant lost weight), and as a result of the Claimant not supplying the Carrier with an annual CPAP compliance report (or taking an in-clinic sleep study indicating he no longer had the condition), the Carrier restricted the Claimant from operating the Carrier's DOT-rated vehicles. The Carrier did not consider sufficient non-sleep specialists' conclusions indicating that the Claimant no longer needed to use a CPAP machine or no longer suffered from the severe obstructive sleep apnea condition.

The Organization contends that the Claimant lost work opportunities as a result of the restrictions imposed. The Carrier disputes that assertion.

The Carrier lifted the restrictions upon the Claimant's supplying a CPAP compliance report (which the Carrier reduced from a 30-day to a 14-day CPAP usage requirement) and he was allowed to operate DOT vehicles.

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 and awards cited. Given the Claimant's previous diagnosis of severe obstructive sleep apnea, the Carrier was not arbitrary in placing restrictions on the Claimant until he met the conditions of providing the annual CPAP compliance report or submitting to an in-clinic sleep study.

The fact that the Claimant's medical personnel (non-sleep specialists) were of the opinion that the Claimant did not need a CPAP device does not change the result. 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 ....").

After the Claimant submitted the compliance report, the restrictions were lifted. Given the lifting of the restrictions and that the Organization has not sufficiently demonstrated loss of work opportunities (the record is in dispute on that issue), the Organization's procedural arguments are therefore moot.

**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.