

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 45442  
Docket No. SG-47624  
25-3-NRAB-00003-220951**

**The Third Division consisted of the regular members and in addition Referee Paul S. Betts when award was rendered.**

**(Brotherhood of Railroad Signalmen  
PARTIES TO DISPUTE: (  
(Union Pacific Railroad Company**

**STATEMENT OF CLAIM:**

**“Claim on behalf of D. Westerman to be returned to service and compensated for lost wages starting on October 21, 2021, and continuing until he is returned to service; account Carrier violated Rules 5 and 52 of the Agreement when on October 21, 2021, it removed him from service and failed to notify him in writing the reasons for the disqualification and failed to return him to service in a timely manner. Carrier’s File No. 1767864, General Chairman’s File No. S72-5,52-238, BRS File Case No. 5552, 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.**

**In the instant dispute, the Organization alleges the Carrier removed the Claimant from service on 10/21/21 following a DOT (Department of Transportation) examination. The Organization asserts that on 11/18/21, the Claimant was cleared to return to service without restrictions by his cardiologist, but the Carrier did not clear**

the Claimant to return to service nor disqualify the Claimant per Rule 52 of the Agreement.

In relevant part, Rule 52 states the following:

**“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.”**

The Organization argues a) the Claimant was removed from service by the Carrier on 10/21/21 following a DOT physical. On 11/18/21, the Claimant was cleared to return to service without restrictions by his cardiologist, but the Carrier failed to return the Claimant to service, thereby denying the Claimant work opportunities, b) the Carrier failed to notify both the Claimant and General Chairman in writing of the Claimant’s disqualification under Rule 52, c) the Carrier has levied the Claimant with an unspecified path for his prompt return and continues to deny him his right to work, and d) the Carrier mishandled paperwork regarding the Claimant’s return to work.

The Carrier argues a) the decision to remove the Claimant from service was necessary and proper based upon information the Claimant provided to DOT during the Claimant’s DOT examination on 9/2/21, b) HMS (Health and Medical Services) records indicate the Claimant had significant and multiple health issues that had not been previously reported to the Carrier, c) HMS records indicate that the Claimant himself did not feel he was able to return to work, d) HMS was diligent in communicating with the Claimant regarding his removal from service and what requirements and information were required of him, e) the Claimant was not disqualified as asserted by the Organization. The Claimant was simply withheld from service pending further medical evaluation and receipt of additional medical records. Where a material dispute of fact exists, as it does here, the Organization’s claim must fail as they have not met their burden of proof, and f) the Carrier has the right to ensure that its employees are physically capable of performing their duties.

After a thorough review of the record, the Board finds the Organization failed to convince the Board that the Agreement was violated.

A review of medical records indicates that HMS had legitimate concerns regarding the Claimant's ability to safely perform his duties due to several serious medical issues. The Claimant reported frequent episodes of feeling off balance, episodes of near-syncope, dyspnea on exertion, fatigue, exertional chest tightness, shoulder problems, blurred vision, and tingling in the shoulders. Furthermore, it was not until October 2021 that the Carrier became aware of the Claimant's history of coronary heart disease with stent placement and associated recurrent symptoms.

The record indicates that the Claimant himself did not feel he could return to work safely and reveals that HMS was in contact with the Claimant regarding his medical situation and the Claimant's need to provide specific and additional medical documentation regarding his fitness for duty.

As the Board has said on many occasions, the Carrier has the right and responsibility to set reasonable medical standards, and to request and review medical documents to ensure fitness for duty. Although HMS advised the Claimant of his need to provide a) follow-up cardiology notes regarding his lexiscan and b) clinical notes regarding the Claimant's blurred vision and tingling in his extremities, there is no evidence in the record indicating that the Claimant ever provided the requested records. As a result, the claim must 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 3<sup>rd</sup> day of April 2025.