

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45443
Docket No. SG-47782
25-3-NRAB-00003-230168**

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 L. Frausto to be returned to service and compensated for lost wages from March 26, 2022, to July 19, 2022; account Carrier violated Rules 5, 52, and 65 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 doctor on February 7, 2022. Carrier’s File No. 1774768, General Chairman’s File No. S99-5,52-304, BRS File Case No. 5848, 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 failed to timely return the Claimant to service. The Claimant was cleared to return to work by his personal physician on 2/7/22. The record indicates the Claimant was returned to service by the Carrier on 7/19/22.

The Organization argues a) on 2/7/22, the Claimant was cleared to return to service by his physician. The Claimant timely submitted the requested medical documentation and the Carrier failed to promptly return the Claimant to service, thereby denying him work opportunities, b) the Carrier violated Rule 52(a) by disqualifying the Claimant medically and preventing his return to work without providing a written explanation to both the Claimant and the General Chairman, 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 the Claimant's case, thereby delaying his return to work.

The Carrier argues a) the delay in returning the Claimant to service was impeded by the Claimant himself, as he failed to timely comply with documentation requested by HMS regarding his return to work, b) the Claimant was off work for over one year and the Carrier has an obligation to ensure that the Claimant is fully fit to resume duty, c) the Carrier has a right and responsibility to request and require documentation to ensure the Claimant's fitness and ability, d) HMS was diligent in communicating with the Claimant regarding the documentation and information required of him concerning his return to work, e) the Organization has presented a claim absent proof of their assertions, and f) the Claimant was not disqualified as asserted by the Organization. The Claimant's delay in returning to service was due to his failure to timely comply with HMS documentation requests. 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.

As indicated above, the primary issue presented to the Board concerns the Organization's assertion that the Carrier failed to promptly return the Claimant to service after he was released to return to work by his personal physician on 2/7/22. The Carrier asserts that the reason for the delay in returning the Claimant to service was due to the Claimant's failure to timely comply with HMS requests for documentation required to ensure the Claimant's fitness for duty.

In review of these competing contentions, the Board highlights the timeline provided by HMS regarding the Claimant's case.

A review of the HMS timeline indicates the following:

Date	Summary
1/26/22	HMS apprised of Claimant's pending release to return to work. Request for medical records mailed to Claimant.
4/11/22	Another request for medical records is mailed to Claimant. HMS contacts Claimant by phone, summarizing the conversation as follows: "Nurse call to EE advising that we need records in order to review his case for RTW. EE states that he was out originally for [illness] then sustained a [injury]. I requested all records from the provider treating him for both conditions. EE voices understanding and would like letter mailed to him but not emailed."
4/18/22	Claimant's case reviewed by the Associate Medical Director (AMD). In relevant part, the AMD summarizes the review as follows: "...The employee is not FFD. He has had a very serious [injury] and he has not provided any of the requested documentation to HMS...We will await the requested information."
4/19/22	HMS calls Claimant and leaves a voice mail, requesting a return call to review AMD findings. Another request for medical records is mailed to Claimant.
4/21/22	HMS calls Claimant and leaves a voice mail advising the Claimant of the 4/19/21 request for medical records mailing.
4/26/22	HMS contacts Claimant by phone, summarizing the conversation as follows: "Nurse call with EE informing of medical records needed. Explained in detail what records are required for FFD review."
5/11/22	HMS calls Claimant and leaves a voice mail requesting a return call, advising the Claimant that "some medical has been received but not all requested records."
5/23/22	AMD determines Claimant is cleared to return to work without restrictions. HMS calls Claimant, advising him of medical clearance and need for return to work exam for leaves greater than one year.
5/24/22	Return to work exam scheduled for 6/8/22.

The Carrier has a right and responsibility to medically evaluate employees, which includes its right to request and review medical documents to ensure fitness for

duty. Although the Organization asserts that the Claimant submitted timely and complete medical records to HMS, there is little, if any, probative evidence to support this contention given the timeline noted above. What documents did the Claimant provide to HMS? When were those documents provided? Other than the Claimant's 2/7/21 release to return to work document regarding his cervical fracture, the record is void of any probative evidence concerning medical documents that may have been provided to HMS by the Claimant. The burden of proof rests with the Organization as the moving party in this dispute and the Board has consistently held that mere assertions cannot be accepted as proof.

That said, the Board notes that the Carrier cleared the Claimant for work on 5/23/22 with a corresponding return to work exam scheduled for 6/8/22. There was no reasonable explanation provided by the Carrier as to why it took the Carrier well over a month (41 days) to return the Claimant to service on 7/19/22. Given that the return to work exam was scheduled for Wednesday, 6/8/22, the Board finds that it would have been reasonable for the Carrier to both review the exam results and return the Claimant to service within a five-day period. As a result, the Board directs the Carrier to compensate the Claimant for all lost wages between 6/13/22 and 7/19/22.

Although the Board may not have repeated every item of documentary evidence, nor all the arguments presented, we have considered all the relevant evidence and arguments presented in rendering this Award.

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 3rd day of April 2025.