

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 45542
Docket No. 48380
26-3-NRAB-00003-240038

The Third Division consisted of the regular members and in addition Referee Michael D. Phillips when award was rendered.

(Todd Denmark
PARTIES TO DISPUTE: (
(CSX TRANSPORTATION, INC.

STATEMENT OF CLAIM:

“On February 23, 2022, the Claimant was cleared by his physician to return from work from a medical leave. Claimant submitted Carrier required Return to Work form. Though the Claimant’s attending physician attested to the Claimant’s fitness to return to service, the Carrier’s medical department did not clear the Claimant’s return until April 20, 2022 to return to service the following day.

Article 15 requires that, in the event a dispute arises with respect to whether physical disqualification is justified, the dispute shall be promptly referred to a panel of two physicians, one selected by the Train Dispatcher, one selected by the Company. As the Carrier did not refer the instant matter to a panel of physicians as described in Article 15, it must be understood that the Carrier did not dispute the determination made by the Claimant’s physician that the Claimant was physically sound to return to service and withheld the Claimant from service unnecessarily.

Because the Carrier’s medical department would not authorize the Claimant’s return to work, he was prohibited from returning to his former assignment or exercising seniority in violation of Article 8(c).”

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.

On July 26, 2021, Claimant Todd Denmark began his second medical leave of absence from his position as a Train Dispatcher due to the effects on him from Covid-19. This case involves Claimant's request for pay for the period between the date Claimant alleges he was cleared to return to service, February 23, 2022, and when he was actually allowed to return on April 21, 2022, and whether the Carrier improperly delayed Claimant's return to service.

The American Train Dispatchers Association ("the Organization") submitted the instant claim on April 26, 2022, contending that the Carrier violated Articles 8 and 15 of the applicable agreement when the Carrier's medical department would not authorize Claimant to return to work or exercise his seniority. It set forth a timeline of events, stating that Claimant was cleared by his physician to return to work on February 23, 2022, and that though Claimant's attending physician attested to Claimant's fitness to return to service, the Carrier's medical department did not clear Claimant's return until April 20, 2022.

The Organization stated that Article 15 requires, in the event a dispute arises with respect to whether physical disqualification is justified, the dispute shall be promptly referred to a panel of physicians, one selected by the Train Dispatcher, one selected by the Company. It stated that as the Carrier did not refer the instant matter to a panel of physicians as described in Article 15, it must be understood that the Carrier did not dispute the determination made by Claimant's physician that Claimant was physically sound to return to service. The claim stated that Claimant was withheld from service unnecessarily, and it sought compensation for lost wages incurred between February 26, 2022, to April 21, 2022.

The Carrier denied the claim, stating that the Organization had not provided any detail as to how the Carrier allegedly violated the cited rules or how Claimant was entitled to pay for a period in which he had been held out of service by the medical department. It stated that Claimant was required to submit medical paperwork in

order to return to service, but that he withheld information that was required for the Carrier to make a medical determination as to his fitness for duty.

The Carrier stated that Claimant initially submitted redacted information, and that when he was asked to provide un-redacted copies of the documentation, he refused to do it. It stated that when Claimant finally provided the necessary information on April 20, 2022, he was promptly approved to return to work, and he marked up for service on April 21, 2022. The Carrier asserted that it was Claimant's refusal to provide the necessary information which delayed his return to work, and that such circumstances do not implicate the provisions of Article 15 regarding a panel of physicians, as Claimant's actions had prevented the Carrier from making a medical determination as to his fitness that conflicted with his own physician's assessment. It concluded that the Organization had not supported its assertions with facts or evidence.

The Organization submitted an appeal, arguing that it had provided specific details and relevant agreement language to meet the applicable burden of proof. It stated that, after Claimant was cleared by his physician, the Carrier's medical department did not contest that physician's findings, but it nevertheless failed to restore Claimant to service for another two months.

The Organization asserted that, per the Carrier's own published policies, the completed MD-3 form submitted by Claimant's physician provided the necessary information to determine Claimant's fitness for duty. The Organization stated that the Carrier did not indicate the form was incomplete, it did not make specific inquiries regarding the treatment for the illness that caused Claimant to be absent, and it did not express any other concern that would relate to Claimant's ability to perform his assigned tasks. The Organization said that Claimant made many unsuccessful attempts to satisfy the Carrier without sacrificing his privacy, but that, under protest and duress, he acquiesced and requested that his physician comply with the Carrier's demand. It stated that the Carrier's quick determination to return Claimant to service thereafter confirmed that the previously redacted information was not relevant nor was it grounds to preventing his return.

The Carrier denied the appeal, again maintaining that no violation of the cited agreements had been established. It stated that it could not be liable for any time Claimant was out of service, as it was Claimant who hindered the medical department from performing its due diligence when he failed to provide information necessary to substantiate that he was fit to return to service. The Carrier stated that it had the right to determine fitness for service, including the right to require additional medical

documentation, and that it was Claimant's refusal to supply the necessary information that prevented the medical department from determining his fitness and which impeded his return to service. It asserted that the information requested was used to determine whether Claimant could return from his leave and perform his duties in a safety critical work environment, and that it was not Claimant's prerogative to determine which information to withhold and which to supply. It concluded that the Organization had not articulated how Claimant was entitled to compensation for a period in which his own actions impeded the process, and that there was no evidence to support the alleged rule violations.

The parties discussed the matter in conference, maintaining their respective positions. The matter now comes to us for resolution.

The parties' positions before us are essentially the same as those set forth in the on-property handling described above. Claimant, who has progressed the matter himself, maintains the stance that the Carrier violated the agreement by denying his rights when it withheld him from service after his doctor had cleared him.

Claimant asserts that his physician's submission of a completed MD-3 form required by the Carrier should have been sufficient to return him to work, as it was for his first absence due to Covid-19. He notes that the instructions associated with the form include the statement that "the information is used to determine Fitness for Duty on returning to work in a safety sensitive environment," and he states that the Carrier did not indicate the form was incomplete nor did the Carrier make requests for specific information relevant to his ability to perform the tasks of his assignment.

Claimant argues that the Carrier made an unreasonable demand for his entire file with his personal physician, beyond records related to his treatment for Covid-19. He avers that he was relying on the Carrier's own written instructions regarding requests for additional medical information in determining how much medical information was necessary. Claimant denies that he was uncooperative or obstructive, but that he made the initial redactions himself due to his observation that the file contained his entire medical history with the physician, which extended to prior to his first leave of absence for Covid-19. He states that he did so due to privacy concerns, and that after he was informed the redacted information was insufficient, he provided subsequent submissions compiled by his physician which should have been sufficient to satisfy the Carrier's requests. He asserts that once those documents were provided, the Carrier had all that it needed to determine if he was able to perform his work safely, that there was no reason for the Carrier to continue to withhold him from service, and

that the Carrier's decision to withhold him from service for an extended period was an abuse of managerial discretion.

Claimant cites prior awards which have addressed employees being withheld from service for medical evaluations, and he describes a guiding principle therein that a Carrier's rights in that regard are not unfettered and that the Carrier cannot arbitrarily or unnecessarily prolong the evaluation process. He states that the Carrier bears the burden of making adequate assessments with due diligence to ensure an employee's return to service with minimal losses, and that the Carrier bears the "risk of fallibility" when it improvidently withholds an employee on medical qualification grounds. Claimant contends that the Carrier in this instance acted in bad faith when it failed to substantiate the need for him to be withheld from service for the period it did, and he urges that the claim be sustained.

The Carrier, on the other hand, maintains its position that no violation of the cited agreements has been established. It states that Claimant bears the burden of establishing an alleged agreement violation by presenting probative evidence to establish that an agreement violation occurred, but that none was offered in this case.

The Carrier asserts that Claimant essentially withheld himself from service and hindered the Carrier's medical department from performing it due diligence when he failed to provide necessary information to substantiate whether he was fit to return to duty. It states that Claimant made the unilateral decision that information in his medical history was not pertinent to his return to service, and that he hid that information, preventing the medical department from ascertaining his fitness for duty. The Carrier states that it made several attempts to obtain the un-redacted information, but that Claimant refused to supply it until April 20, 2022, after which the determination could be made, and Claimant was promptly returned to service.

The Carrier avers that Claimant had the responsibility to provide necessary information, and that his delay in providing that information is what delayed his return to service. The Carrier states that Claimant is not medically qualified to determine what information is relevant to the medical department's decision on his fitness for duty. It cites prior awards which have held that a Carrier has the right to determine fitness for service, and it posits that it may require additional medical documentation be provided if the medical department deems it necessary for a complete review. The Carrier states that Claimant's role as a Train Dispatcher is a critical and safety sensitive position, and that it has the right to ensure the safety of its employees and the community.

The Carrier asserts that this situation did not implicate Article 15, as the Carrier did not have sufficient medical documentation to make the medical decision to disqualify Claimant. It states that the matter never arose to a dispute regarding Claimant's fitness because of Claimant's refusal to provide the necessary documentation to generate differing medical opinions. The Carrier concludes that there is no proof to establish an agreement violation, and that the claim therefore must be denied.

We have carefully reviewed the record, including the correspondence, attachments, and citations of authority, and we find that Claimant has not established that he is entitled to the requested payment. The claim cites alleged violations of Articles 15 and 8 as the basis for the payment, but we do not find sufficient evidence of record to establish a violation of either of those Articles.

Article 15 – Physical Disqualification addresses disputes with respect to whether physical disqualification of a Train Dispatcher is justifiable. In this case, however, we agree with the Carrier that the dispute resolution process set forth in that Article was not required.

This is not a case in which the Carrier physically disqualified Claimant. Here, it is undisputed that Claimant went on a leave of absence for a serious medical condition, and it was incumbent upon him to provide adequate information for the Carrier's medical department to make a determination that he was fit to return to his safety sensitive position. When Claimant provided medical records which he himself redacted, we believe the Carrier's medical department could reasonably require that unredacted records be provided for it to make that decision.

As noted in communication from the medical department, which is part of the record, they could not be sure that the redacted information did not contain information that would impact the decision as to whether Claimant was safe to work, and we find nothing unreasonable about that concern. We also find no indication that the Carrier's medical department was unreasonable or that it acted in bad faith when it determined that Claimant's subsequent provision of only a portion of his records did not alleviate that concern.

We have also reviewed the arbitral authority submitted by Claimant, and we do not believe it requires a different conclusion. Those cases involve instances in which an employer's determination to withhold an employee from service was not found to be substantiated, and compensation was awarded on the basis that an employee withheld

from service who was not actually unfit should not bear the costs of the employer's misjudgment. We do not believe those circumstances are present here.

We are not unsympathetic to Claimant's concerns for privacy, but we do not believe they outweigh the Carrier's legitimate need to confirm that employees occupying safety sensitive positions such as Train Dispatchers are fit for service. Moreover, as noted in the communications with the medical department, the medical department keeps all employee medical information confidential. In these circumstances, we conclude that Claimant has not met his burden of establishing a violation of either of the cited Articles, so we cannot find a basis to award the requested payment.

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 27th day of January 2026.