

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 45547
Docket No. SG-48764
26-3-NRAB-00003-240400

The Third Division consisted of the regular members and in addition Referee Rachel R. Yurek when award was rendered.

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

STATEMENT OF CLAIM:

“Claim on behalf of J. Autin, III, to be compensated for lost wages from June 22, 2023, until the Claimant is returned to work; 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 Physician on June 29, 2023. Carrier’s File No. 1793631, General Chairman’s File No. S206-5, 52-434, BRS File Case No. 6691, NMB Code No. 307 - Contract Rules: Medical/FFD.”¹

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.

¹ The claim was corrected by letter dated January 4, 2024 to note the typo in the initial claim stating “June 22, 2023” rather than “June 29, 2023.”

At the time of this dispute, Claimant John Autin III (“Claimant”) was assigned as a Skilled Signalman on Y5 gang 4590. Claimant began a medical leave of absence on February 10, 2022 that continued until July 10, 2023. Carrier policy requires employees on leave of absence for more than one year to undergo a physical examination before they can return to service. Carrier received the results of the Claimant’s physical on August 8, 2023 and completed its review on August 28, 2023. Carrier then contacted Claimant on August 29, 2023 to request additional medical records. Correspondence in the record indicates that Claimant had not been returned to service as of January 3, 2024. It is unclear from the record when Claimant later returned to service.

On August 25, 2023, the Organization filed a claim on behalf of Claimant alleging that Carrier violated Rules 5 and 52 of the controlling agreement when it failed to return Claimant to service after being cleared by his personal physician on June 29, 2023 and alleging this amounted to a disqualification, for which notice was required by Rule 52, beginning on that date.

On September 13, 2023, Carrier responded and denied that Claimant was disqualified from service pursuant to Rule 52 Physical Examinations. Carrier contends that Claimant reported a serious medical condition that required he be on a medical leave of absence for more than one year. Any time an employee is on leave for more than one year, they are required to undergo a return to work physical. While his medical leave of absence ended on July 10, 2023, Claimant did not provide his physical results until August 8, 2023. They were reviewed promptly by Carrier’s medical department.

On August 29, Claimant was notified additional information was needed to evaluate his ability to safely perform his job. As of the date of the Carrier’s response, Claimant had yet to provide the requested information. Subsequent correspondence shows Claimant did not provide additional medical records until at least October 12, 2023. Carrier maintains it has an obligation to ensure its employees are capable of working safely, both for their own well-being and that of the communities in which Carrier operates.

The Organization counters that it is not arguing with Carrier’s obligation to provide a safe working environment nor its right to conduct fitness for duty examinations when an employee reports a serious health condition. However, Carrier is still required to comply with the plain language of Rule 52 by providing written notice when it does so. Further, the Organization urges that the Carrier cannot abuse this right by arbitrarily delaying a return to service once the employee has provided written documentation of his fitness.

The parties' Agreement provides, in part:

“RULE 5 – 40-HOUR WORK WEEK

NOTE: The expressions “positions” and “work” used in Rule 5 refer to service, duties or operations necessary to be performed the specified number of days per week and not to the work week of individual employees.

GENERAL

There is established for all employees, subject to the exceptions contained in this agreement, a work week of 40 hours, consisting of five days of eight hours each, with two consecutive days off in each seven; the work weeks may be staggered in accordance with the Carrier's operational requirements, so far as practicable the days off will be Saturday and Sunday. The foregoing work week rule is subject to the provisions which follow:

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.

RULE 65 – LOSS OF EARNINGS

An employee covered by this agreement who suffers loss of earnings because of violation or misapplication of any portion of this agreement will be reimbursed for such loss.”

Claimant was not disqualified from his Signal position on June 29, 2023. Claimant was on extended medical leave of absence for a neurological condition beginning February 10, 2022 and ending July 10, 2023. Claimant was required to undergo a return to work

physical because he was on leave for more than one year. To meet this requirement, Claimant supplied a letter dated June 29, 2023 releasing him to return to full duty.

The June 29, 2023 letter from his physician only referenced his fitness for duty vis-à-vis the results of a colonoscopy, which was unrelated to the reason for his extended medical leave. Claimant then submitted the results of a physical to Carrier on August 8, 2023. Carrier requested additional information on August 29, 2023. Carrier was well within its rights to require additional medical information from Claimant's neurologist.

A Carrier's right to assess employees' fitness for duty is well-established. As Neutral Martin Malin held in Public Law Board 6302, Award 8:

“The Organization contends that Carrier never established that Claimant was medically unable to perform his duties. However, it is well-established that Carrier has the right to withhold employees from service for medical reasons. Carrier is charged with the responsibility for the safety of the employees and its decisions to withhold employees for medical reasons should not be second guessed by a reviewing tribunal. The Board should overrule such a decision only where it is shown to have been made in bad faith or to have been arbitrary or capricious.”

The record shows it was the Claimant who delayed providing requested medical information until at least October 12, 2023. Whether the delay in his return to service thereafter was attributable to his own failure to provide timely information, or to Carrier for failing to timely review it, is not discernable from this record. As Neutral Martin Malin held in Award 8 (supra), “as an appellate body, we are unable to resolve such factual disputes. Accordingly, we have no choice but to hold that the Organization has failed to prove excessive delay.” No evidence was offered as to how Rule 5 was violated by Carrier's actions. The Organization failed to prove a violation of Rule 5.

AWARD

Claim denied.

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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.