

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 45550
Docket No. SG-48981
26-3-NRAB-00003-240665

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 S. Tompkins to be returned to service and compensated for lost wages beginning December 1, 2023, until the date of the Claimant returned; account Carrier violated the current Agreement, particularly Rules 5, 52, and 65, 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 December 1, 2023. Carrier’s File No. 1798233, General Chairman’s File No. S72-5,52-471, BRS File Case No. 6840, 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.

At the time of this dispute, Claimant Shannon Tompkins (“Claimant”) was assigned as a Skilled Signalman on Y6 gang 2669. Claimant began a medical leave of absence on October 9, 2023 that continued until December 4, 2023, when a nurse

practitioner released Claimant to full duty with no restrictions retroactive to November 30, 2023. The medical release was documented on Carrier's Medical Progress Report form and submitted to its Health and Medical Services (HMS) on December 8, 2023. Evidence in the record shows a member of HMS contacted Claimant on December 11, 2023 to advise the records were incomplete and notify him of what was still needed.

On December 11, 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 December 1, 2023 and alleging this amounted to a disqualification, for which notice was required by Rule 52, beginning on that date.

On January 8, 2024, 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 requiring a medical leave of absence for several months. Any time an employee is on medical leave, they are required to undergo a return to work fitness for duty evaluation. Carrier contends 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 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 December 1, 2023. Claimant was on medical leave of absence for a lumbar injury beginning October 9, 2023. Claimant was required to undergo a fitness for duty evaluation before being allowed to return to work. 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.”

To assess his fitness for duty, Claimant supplied a letter dated December 4, 2023 releasing him to return to full duty effective November 30, 2023. Claimant provided this release to Carrier on December 8, 2023. It was reviewed promptly by Carrier's medical department, who contacted him just three days later to notify him more information was needed. Additional medical records were supplied promptly on December 13 and Claimant's medical leave of absence was extended on December 14 to allow additional time for review.

This is where the record essentially ends. Neither party supplied this Board with any evidence of what occurred after December 14, 2023, nor when Claimant was returned to service. For example, there is no mention one way or the other in the Organization's March 25, 2024 letter whether Claimant is still out of service.

Without this evidence, the Board is unable to discern from the record before it whether any delay occurred, or if it was Carrier, Claimant, or some combination thereof, who caused it. 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." Additionally, 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.

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.