

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 45552
Docket No. SG-49002
26-3-NRAB-00003-240693

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. Ethridge to be returned to service and compensated for lost wages starting from October 30, 2023, until the date of the Claimant's reinstatement; account Carrier violated Rules 5, 52, 53, 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 August 28, 2023. Carrier's File No. 1799935, General Chairman's File No. S141-5,52-472, BRS File Case No. 6825, 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 Shane Ethridge (“Claimant”) was assigned as a Skilled Signalman on Y6 gang 4616. On April 5, 2023, Claimant suffered multiple aneurysms of the cerebral artery, which necessitated a medical leave of absence.

Claimant's neurosurgeon cleared him to return to full duty on August 31, 2023, retroactive to August 28. However, the "full duty" release included lifting and carrying restrictions of 15 pounds. Carrier medical staff requested and received additional medical records between September and November 2023. On November 16, 2023, Claimant received permanent restrictions on his ability to work on gangs of less than three people, operate company vehicles, or work on or near rolling stock, among other restrictions.

Carrier Health and Medical Services (HMS) records indicate Claimant was medically cleared with permanent restrictions on December 14, 2023. However, Claimant was not allowed to return to service at that time. The record indicates Claimant had not been returned to service as of January 25, 2024. It is unclear from the record when Claimant later returned to service.

On December 27, 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 August 28, 2023 and alleging this amounted to a disqualification, for which notice was required by Rule 52, beginning on October 30, 2023.

On January 25, 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 that required a medical leave of absence. Any time an employee is on medical leave, they are required to undergo a fitness for duty evaluation prior to returning. 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.

B. Requesting Re-Examination

If the employee feels his condition does not justify removal from the service or restriction of his rights to service, he may request re-examination. Such request must be submitted by him or his representative within thirty (30) days following notice of the disqualification, unless extended by mutual agreement between the General Chairman and Labor Relations. He may be given further examination as follows:

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 October 30, 2023. Claimant was on medical leave of absence for a neurological condition beginning in April 2023. Claimant was required to undergo a fitness for duty evaluation prior to being allowed to return. While Claimant’s neurologist cleared him to return to “full duty,” Carrier was entitled to conduct its own evaluation of Claimant’s ability to perform the specific tasks of a Skilled Signaller.

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.”

When Claimant was given permanent restrictions on December 14, 2023, the Organization included a request for re-examination per Rule 52(b) with their December 27, 2023 claim. Subsequent correspondence exchanged between the parties indicates Carrier HMS contacted Claimant in January 2024 to discuss this and Claimant opted for a no-cost review of his medical records by an independent third party (University of Nebraska Medical Center) rather than the three-doctor panel detailed in Rule 52. While the Organization disputes that re-examination under Rule 52 would be at any expense to Claimant, Rule 52(b)(3) expressly states the cost of the Claimant’s physician is his responsibility as well as half the cost of the third panelist.

Claimant was also offered the opportunity to add any records he wished to the packet for the independent third-party review, and he did add records. The packet was sent to UNMC on February 14, 2024 and was still under review as of March 20, 2024.

This is where the record ends. Neither party supplied this Board with any evidence of what occurred after April 2024, nor when Claimant was returned to 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.”

No evidence was offered as to how Rules 5 or 53 were violated by Carrier’s actions. The Organization failed to prove violations of Rules 5 or 53.

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.