

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 45553
Docket No. SG-49007
26-3-NRAB-00003-240700

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

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

STATEMENT OF CLAIM:

“Claim on behalf of J.C. Goetz to be made whole for lost earnings, with benefits and seniority unimpaired; account Carrier violated the Agreement, particularly Rules 5 and 52, when from December 12, 2023, and January 5, 2024, when it arbitrarily held the Claimant out of service and failed to notify the Claimant in writing the reasons for his disqualification. Carrier’s File No. 1801081, General Chairman’s File No. N 0383, BRS File Case No. 6881, 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 Jesse Goetz (“Claimant”) was assigned as a Skilled Signalman on gang 5145. Claimant has sleep apnea, which he reported to

Carrier, and he is required to update Carrier Health and Medical Services (HMS) on his condition periodically. On July 14, 2023, Claimant underwent a DOT physical at Carrier's behest. On August 24 and again on October 17, HMS requested data from Claimant's CPAP machine, which he advised he had not been wearing. Claimant also advised the Carrier physician who performed the DOT physical in July that he was not wearing the CPAP.

On November 20, 2023, HMS deemed Claimant unable to operate a company vehicle and Claimant received an accommodation from Carrier allowing him to remain on the job and ride with someone. On November 28, 2023, Claimant saw his personal physician who also cleared him for DOT operation for three months. On December 5, 2023, Carrier notified Claimant it could no longer accommodate his inability to operate a company vehicle. And on December 12, 2023, Carrier removed Claimant from service pending a fitness for duty evaluation. Claimant participated in another sleep study and provided the results to Carrier on December 27, 2023, showing he did not currently have sleep apnea. Carrier released Claimant to return to service on January 4, 2024 and he returned the next day.

On January 17, 2024, the Organization filed a claim on behalf of Claimant alleging that Carrier violated Rules 5 and 52 of the controlling agreement when it disqualified Claimant from service beginning December 12, 2023 without notifying Claimant or Organization in writing of the reason(s) for the disqualification.

On January 30, 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 further evaluation to ensure he could safely perform the duties of his job, which is a safety-sensitive position per federal DOT and FMCSA regulations. Claimant was briefly withheld pending a medical evaluation of his fitness for duty, which Carrier contends is a long-standing practice and part of its obligation to protect the health and safety of its employees and the communities it serves.

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.

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.”

The Carrier's position is that Rule 52 applies only to employees who have been permanently disqualified from all service due to diagnosed medical conditions; it is

wholly inapplicable to an employee withheld pending a fitness for duty evaluation and later returned to service.

The Organization's position is that Rule 52 makes no mention of "permanent" disqualification. Any time an employee is involuntarily removed from his/her position due to a medical condition, even if later returned to service, Rule 52 requires written notice to that employee and the General Chairman, in the Organization's view.

Carrier, in its submission to the Board, admits that Claimant was withheld from service because Carrier decided "nor was he fit to return to work to perform safety-sensitive duties until the Carrier could verify Claimant's condition (emphasis added)."
Black's Law Dictionary defines "disqualify" as: To divest or deprive of qualifications; to incapacitate; *to render ineligible or unfit*.

Thus, there can be no question that Claimant was disqualified, albeit temporarily, from performing service as a Skilled Signalman. Carrier placed him on leave of absence and notified the General Chairman of such. However, Carrier violated Rule 52 when it failed to send written notice of disqualification to Claimant and his General Chairman.

As Referee Kathryn A. VanDagens held in Third Division Award 44315, when the Carrier violates Rule 52, the claim must be sustained and the Claimant made whole:

"While the Claimant was removed from service on May 29, 2018, he was not given written notice of his disqualification until August 9. There is no record of notification being given to the General Chairperson. By the time this claim was filed, the Claimant had not been given the written notification of the reasons for his removal that he was entitled to. The Carrier's unexplained failure to comply with Rule 52 at the time the Claimant was disqualified left him in limbo for several months. Therefore, the claim must be sustained. The Claimant is entitled to compensation for the period he was held out of service without written explanation."

Because the Board finds that Carrier violated Rule 52 and Claimant is entitled to compensation pursuant to Rule 65, it is unnecessary to reach the question of whether Carrier unreasonably delayed his return to service. On this point, it is well settled that a carrier has the right to conduct its own fitness for duty evaluation using the specific

job duties and tasks the employee performs. The employee has an obligation to promptly provide the required medical records, and likewise the carrier has an obligation to promptly review them and make its determination.

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.”

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.

Claimant is to be compensated from December 12, 2023 to January 4, 2024.

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 27th day of January 2026.