

Joseph Lazar, Referee

PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
TO) AND
DISPUTE) BURLINGTON NORTHERN RAILROAD (Former Fort Worth
 & Denver Railway Company)

1. That the Carrier's decision to withhold Track Laborer Michael W. King from service commencing on November 30, 1983 was in violation of the Agreement and in abuse of discretion.
2. That Claimant King will now be returned to his former position with seniority and all other rights restored unimpaired and with compensation for all wage loss suffered commencing November 30, 1983 forward.

FINDINGS: By reason of the Memorandum of Agreement signed November 16, 1979, and upon the whole record and all the evidence, the Board finds that the parties herein are employe and Carrier within the meaning of the Railway Labor Act, as amended, and that it has jurisdiction.

Claimant Michael W. King has been an employee of the Carrier since August 25, 1977. He was assigned to the position of Track Gang Laborer working under the direct supervision of Roadmaster T. O. Little in the vicinity of Amarillo, Texas.

Claimant was withheld from service on November 30, 1983, having the following record:

In 1981, the Carrier first became aware of Claimant's involvement in street drugs. At that time, the Carrier attempted to help Claimant with his problem through its Employee Assistance Program (EAP). The Carrier persuaded Claimant to obtain inpatient treatment at the Medi Center Hospital at Wichita Falls, Texas, and Claimant entered the Center on September 14, 1981 for 30 days.

Claimant's problem was not solved, and the Carrier's EAP counselors offered assistance, enrolling him for inpatient treatment at the Care Unit at Oklahoma City, Oklahoma, where he entered on October 10, 1982, for 28 days.

On October 19, 1983, Claimant was released from treatment for an on-duty injury. Again, however, he could not be restored to service because of his severe drug addiction. With EAP assistance, Claimant was enrolled for inpatient treatment at the Care Unit at Canyon, Texas on November 1, 1983.

On November 24, 1983, Claimant was returned to service as a trackman. However, it immediately became apparent that he still suffered from severe drug addiction. This addiction affected his ability to perform his duties and constituted a threat to his safety, the safety of his fellow employees, and the public. Claimant's supervisor brought this problem to the attention of the Chief Medical Officer (CMO). The CMO reviewed Claimant's record and felt compelled to withhold him from service.

On November 30, 1983, Claimant was withheld from service. On December 2, 1983, Claimant was given a wire advising him that he would not be returned to service until approved by the CMO. By letter dated December 6, 1983, the Superintendent directed Claimant to have his personal physician contact the CMO regarding Claimant's condition.

Meanwhile, the Carrier's EAP counselors had still been working to help Claimant. On February 1, 1984, they enrolled him at the Care Unit at St. Louis, Missouri, where he received 30 days' inpatient treatment.

On March 28, 1984, the Assistant Chief Medical Officer wrote to the Superintendent to advise regarding Claimant's status. The Assistant Chief Medical Officer described Claimant as having "chronic unremitting chemical dependency". The ACMO advised that there still had been no contact from Claimant's physician, and he wrote:

"He has not furnished us any report from any of the treating doctors or treatment programs regarding his status and we have had no contact with any of his physicians. Until we can carefully review this chronic problem with full information from the treating physicians, and can review their current response to therapy and their current recommendations, we cannot even consider this individual for return to service. Once he has provided us with the comprehensive medical information as requested, we will be happy to make more definite long-term recommendations."

On May 25, 1984, Claimant was arrested for burglary and parole violation, and was incarcerated in jail.

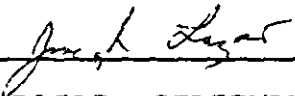
The Board finds that Claimant's severe drug addiction was the reason for the Carrier's withholding him from service. It is well established that the Carrier has the right to withhold an employee from service pending medical examination when the Carrier has reasonable grounds to question or be in doubt as to the employee's physical or mental fitness. This right is predicated on the premise that the Carrier has the obligation to see that an employee is physically capable and competent to perform his duties without hazard to himself, his fellow workers, or the public. There is no evidence in the record to support Claimant's allegation that the Carrier refused to return him to service owing to Claimant's litigation with the Carrier in connection with on-duty injuries, and such allegation is completely without merit.

The evidence of record is clear that Claimant has not complied with the Superintendent's letter of December 6, 1983 directing Claimant to have his personal physician contact the Chief Medical Officer regarding his condition. It is axiomatic that no one should be permitted to profit by his own dereliction or dilatoriness, and Claimant's claim for time lost resulting from his own failure to have his personal physician contact the CMO must be denied.

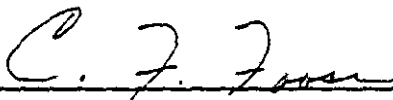
The evidence of record is clear that the Carrier has acted in good faith and with reasonable expedition at all times in regards to returning Claimant to service. Claimant, on the other hand, has failed to satisfy the requirements stated in the Carrier's letter of December 6, 1983 for returning to work.

A W A R D

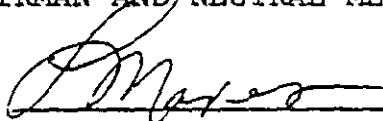
1. The Carrier is not in violation of the Agreement.
2. Claimant shall be returned to service on condition that (a) he provide the Carrier with full information from Claimant's treating physicians or treating programs as may be requested by Carrier's EAP Counsellors and/or Medical Officers, and (b) such information satisfies the Carrier's EAP Counsellors and/or Medical Officers that Claimant is physically and mentally competent for return to service.
3. The claim for time lost is denied.



JOSEPH LAZAR, CHAIRMAN AND NEUTRAL MEMBER



C. F. FOOSE, EMPLOYE MEMBER



L. MARES, CARRIER MEMBER

DATED: December 17, 1985

