

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6302

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES)
and) Case No. 150
UNION PACIFIC RAILROAD COMPANY) Award No. 145
_____)

Martin H. Malin, Chairman & Neutral Member
T. W. Kreke, Employee Member
D. A. Ring, Carrier Member

Hearing Date: June 18, 2008

STATEMENT OF CLAIM:

- (1) The Carrier's decision to withhold James H. Barber from work between the dates of August 18, 2007 and September 15, 2007 pending a supervisor requested fitness-for duty evaluation is unjust, unwarranted, excessive and in violation of the Agreement (System File D-0750U-201/1487555).
- (2) As a consequence of the violation outlined in Part (1) above, we request that Claimant J. H. Barber be allowed compensation for all hours (straight time and overtime) he was not allowed to work between August 28, 2007 and September 16, 2007 when he was returned to service. This shall include eight (8) hours' holiday pay for the observance of the Labor Day holiday.

FINDINGS:

Public Law Board No. 6302 upon the whole record and all of the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute herein; and, that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

The record reflects that Claimant had Hashimoto's disease and notified Carrier and his supervisor of this in July 2007. On August 16, 2007, Claimant experienced an incident of rapid heart beat and stated that he needed to see a doctor. Claimant was seen at a hospital emergency room. Claimant's supervisor referred Claimant to Carrier's Medical Department for a fitness-for-duty evaluation. Claimant was withheld from service, pending completion of the evaluation.

The Organization contends that Carrier acted unjustly in withholding Claimant from service because the supervisor already knew of Claimant's condition and the medication he was taking. The Organization observes that, in spite of the August 16 incident, Claimant's doctor's evaluation of Claimant as fit for service and Claimant's medications did not change.

We do not agree with the Organization's position. As we observed in Case No. 17, Award No. 8, "Carrier is charged with the responsibility for the safety of the employees and its decisions to withhold employees from service should not be second guessed by a reviewing tribunal. The Board should overrule such a decision only when it is shown to have been made in bad faith or to have been arbitrary or capricious."

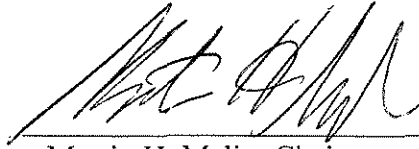
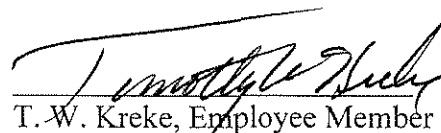
In the instant case, Carrier certainly acted in good faith and reasonably in withholding Claimant from service. With perfect hindsight we might say that the incident did not impair Claimant's fitness to work but at the time of the incident, it certainly was reasonable for Carrier to be concerned with Claimant's fitness. The rapid heart beat incident could have indicated a need to adjust Claimant's medications or it could have indicated a more serious issue. Carrier took the prudent and appropriate course of action in withholding Claimant from service to check these matters out.

The Organization contends that Carrier delayed Claimant's return to service excessively. In Award No. 8, we observed that "once Carrier withholds an employee from service for medical reasons, it has a duty to conduct the medical review expeditiously and, once the medical issues are resolved, to return the employee to service promptly."

The record reflects that on August 22, 2007, Carrier received Claimant's medical records prior to the emergency room visit, but not the ER records. Carrier received the ER records on August 31, 2007. Those records indicated that Claimant's condition was not stable. It was not until September 7, 2007, that Carrier received a release from Claimant's cardiologist. On the same date, Carrier's Medical Department nurse called and obtained a release from Claimant's primary care physician. Carrier cleared Claimant to return to work on September 11, 2007. The record thus reflects that Carrier acted with appropriate prudence and care in evaluating Claimant's fitness for duty. When Carrier received sufficient records that it could safely return Claimant to work, it acted promptly to return him to duty. We find no basis to sustain the claim.

AWARD

Claim denied.


Martin H. Malin, Chairman
D. A. Ring
Carrier Member
T. W. Kreke, Employee Member
Employee Member *Nov 12, 2008*

11-12-08
Dated at Chicago, Illinois, October 30, 2008