

AWARD NO. 130  
Case No. 130

Organization File No. SPG-RTO-Wirick-03-08-11  
Carrier File No. 2011-094228

**PUBLIC LAW BOARD NO. 7163**

PARTIES     ) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES DIVISION,  
              ) INTERNATIONAL BROTHERHOOD OF TEAMSTERS  
TO            )  
              )  
DISPUTE     ) CSX TRANSPORTATION, INC.

STATEMENT OF CLAIM:

1. The Agreement was violated when the Carrier removed and withheld Mr. D. Wirick from service commencing on March 9, 2012 and continuing through April 23, 2011.
2. As a consequence of the violation referred to in Part 1 above, Claimant D. Wirick shall now “. . . be compensated for all hours he could have worked during the carrier’s violation of the agreement for the dates listed above and the Claimant travel expenses that have been submitted to Mr. Steel for payment.”

FINDINGS:

The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated March 20, 2008, this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

On March 6, 2011 a call was made to the Carrier’s “1-800-How’s my Driving” service reporting that the vehicle assigned to Claimant was being operated as if the driver was falling asleep at the wheel. The following day, Claimant’s supervisor, Shelby Steele, received an e-mail report of the call and confirmed that Claimant was the operator of the vehicle. On March 8, 2011, Mr. Steele

called Claimant and instructed him to remain at the hotel and not operate a company vehicle until they met. When Mr. Steele arrived at the hotel, Claimant explained that he suffered from sleep apnea and was also taking medication due to a pinched nerve in his neck. Mr. Steele thereupon removed Claimant from service and informed him that he was medically disqualified until he could be cleared to return to work by the Carrier's Medical Department.

Claimant saw his doctor on March 10, 2011 and was cleared to return to work provided he continued to use his BiPAP<sup>1</sup> machine. The doctor, though, ordered a new sleep study for Claimant to determine if the settings on the BiPAP machine were still appropriate for him. A Return to Work Report prepared by the doctor and containing this information was sent to the Medical Department. By letter dated March 11, 2011, Dr. Thomas Neilson, the Carrier's Chief Medical Officer, responded to Claimant as follows:

I did receive the MD3 from Dr. Andrews and treatment notes from Riverside Regional. The notes from Riverside Regional indicate that you were evaluated on March 7<sup>th</sup> and prescribed pain medication and a muscle relaxer for your back pain. You should also have a physician address the use of these medications as well to determine if you are safe to work while taking them. In addition, you should follow up with the specialist managing your sleep apnea and have him forward to me his recommendations along with the results of a recent sleep study. Once I receive this information, I will consider your qualification to return to work.

Claimant provided the updated medical information on April 18, 2011 and was medically cleared to return to service the following day. The Organization now seeks compensation for Claimant during the period of his disqualification, asserting that the Carrier violated the Agreement by failing to justify its action.

---

<sup>1</sup>Bilevel Positive Airway Pressure (BPAP). BiPAP is a trade name. A BPAP machine is similar to the more commonly used CPAP (Constant Positive Airway Pressure) machine to treat obstructive sleep apnea, except that the BPAP has two air pressure settings while the CPAP has only one.

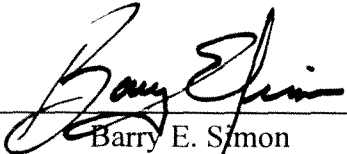
The medical records submitted by Claimant indicate that he was seen at the Riverside Regional Medical Center in Newport News, Virginia on March 7, 2011 for lumbar back pain (not a pinched nerve in his neck). He was diagnosed with lumbrosacral back pain with radiculopathy and prescribed oxycodone-acetaminophen 5mg-325 mg, Valium 2mg and ibuprofen 600mg. Oxycodone is an opioid drug and is a Schedule II controlled substance. Valium is a Schedule IV controlled substance. Neither of these medications should be used while operating machinery or driving. Judging from Dr. Neilson's letter, he had concerns about Claimant's ability to work while taking these medications. Given Claimant's duties as a rail train operator, we find Dr. Neilson's concerns to be legitimate. Even though the doctor prescribing these medications indicated that Claimant could return to work, it has not been established that he was aware of the type of work he performed. The Carrier acted reasonably in withholding Claimant from service until it could ascertain that he could work safely. In addition, a patient with sleep apnea is subject to daytime sleepiness, which could further limit Claimant's ability to work safely if his BiPAP machine was not properly set.

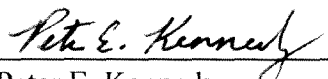
The Carrier acted promptly when it first received information from Claimant's doctor. The following day, he was informed that additional information would be necessary. It then took more than a month for that information to be provided. Once it was received by the Carrier, Claimant was cleared to return to work the following day. Any delays in getting Claimant back to work were not the fault of the Carrier.


Finally, the Organization has asked that Claimant be reimbursed for transportation expenses he incurred in returning home after being removed from service. The Organization acknowledges that Mr. Steele offered to drive Claimant from Newport News to his home in Elwood, Indiana in

a company vehicle. Claimant declined this offer, stating that he had some personal items in the company truck that would not fit in Mr. Steele's vehicle. Consequently, Claimant elected to fly home. In his own written statement, Claimant explained that he purchased the plane ticket to expedite his return home. Under the circumstances, the Board concludes that Claimant was offered transportation home, but declined. His claim for reimbursement of his transportation expenses, therefore, is not appropriate.

AWARD: Claim denied.

  
Barry E. Simon  
Chairman and Neutral Member

  
Peter E. Kennedy  
Employee Member

  
Robert Paszta  
Carrier Member

Dated: January 7, 2013  
Arlington Heights, Illinois