

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6302

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

UNION PACIFIC RAILROAD COMPANY

)
) Case No. 17
)
) Award No. 8
)

Martin H. Malin, Chairman & Neutral Member
D. D. Bartholomay, Employee Member
D. A. Ring, Carrier Member

Hearing Date: May 12, 2000

STATEMENT OF CLAIM:

1. The Agreement was violated when the Carrier improperly withheld Mr. R. P. Perez from service on December 16, 1996 through January 16, 1997 without proper justification, medical evaluation or a fair and impartial investigation (System File N-407/1071309).
2. As a consequence of the violation referred to in Part (1) above, the Claimant shall be compensated for all wage loss suffered and for all expense incurred in the form of lodging, meals, travel, medical examinations and information resulting from the Carrier's improper actions.

FINDINGS:

Public Law Board No. 6302, upon the whole record and all 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.

On November 25, 1996, Claimant, a diabetic, lost consciousness while at work. Claimant's supervisor reported that Claimant suffered a seizure. On November 27, 1996, Carrier informed Claimant that he was being withheld from service for medical reasons. Carrier instructed Claimant to attend a fitness for duty examination on December 5, 1996, and to provide updated medical information from his physician by December 10, 1996. On December 20, 1996, Carrier advised Claimant that it had not received the physician's statement and again instructed him to provide it. Claimant responded with a statement from his doctor, but on December 27, 1996, Carrier advised Claimant that the doctor's statement was insufficient because it did not

indicate that the doctor was aware that Claimant had been removed from service or that Claimant had suffered a seizure. Carrier also asked Claimant to provide two weeks of glucometer readings. Claimant provided the requested information on Friday, January 10, 1997, and was returned to service the following week.

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. In the instant case there can be no question that Carrier acted properly in withholding Claimant from service after he lost consciousness on the job.

The Organization contends that Carrier excessively delayed the medical review and excessively delayed Claimant's return to service. We agree that once Carrier withholds an employee from service for medical reasons, it has a duty to conduct the medical review expeditiously and, once any medical issues are resolved, to return the employee to service promptly. Whether Carrier breached such a duty in the instant case depends on whether Claimant supplied the requested medical information the first time that Carrier requested it.

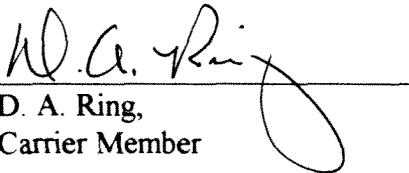
During handling on the property, Claimant maintained that he supplied the doctor's report promptly after Carrier requested in on November 27, 1996. Carrier maintained that it never received the report until after it requested it a second time. As an appellate body, we are unable to resolve such factual disputes. Accordingly, we have no choice but to hold that the Organization has failed to prove excessive delay.

AWARD

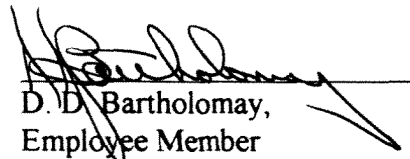
Claim denied.



Martin H. Malin, Chairman



D. A. Ring,
Carrier Member



D. D. Bartholomay,
Employee Member

Dated at Chicago, Illinois, July 6, 2000.