

PUBLIC LAW BOARD NO. 6399

**CASE NO. 25
AWARD NO. 25**

**Brotherhood of Maintenance of Way Employes
Division - IBT Rail Conference**

and

**Norfolk Southern Railway Company
(former Norfolk & Western Railway Company)**

Claimant: D. Dade

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier refused to allow Mr. D. Dade to return to service on March 23, 2020 after he was released by his physician and continued to withhold him from service without just cause (System File MW-BLUE-20-55-SG-391 NWR).
2. As a consequence of the violation referred to in Part 1 above, Claimant D. Dade ‘... shall now be compensated for all lost wages (straight time and overtime hours) as well as all lost time be counted toward his service months with the Carrier. The request for wages and time being counted toward Claimant’s service months begin on March 23, 2020 and will continue until this matter is corrected. ***’ (Employes’ Exhibit ‘A-1’).”

FINDINGS:

The Board, after hearing upon the whole record and all the evidence, finds that the Carrier and Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as amended, that the Public Law Board 6399 has jurisdiction over the dispute involved herein and that the parties were given due notice of hearing thereon.

The Claimant has established and maintains seniority in the Carrier’s Maintenance of Way and Structures Department.

On March 15, 2020, the Claimant marked off work due to illness. The Claimant’s treating physician cleared him to return to service on March 23, 2020. That same day, the Claimant provided his supervisor with his doctor’s release, but the supervisor told the Claimant that he would have to be cleared by the Carrier’s Medical Department before returning to active service. The Medical

Department requested additional information and Claimant forwarded the requested medical records to the Medical Department, but remained held out of service until May 6, 2020.

The Organization filed this claim on April 27, 2020, which was denied by the Carrier on June 24, 2020. The claim was then appealed to the highest officer on-property. As the parties were unable to resolve the claim, it is now properly before this Board for final adjudication.

The Organization contends that the Carrier violated the controlling Agreement by failing to return the Claimant to service until six weeks after he was medically cleared to return to work by his physician. The Organization contends that the Claimant was barred from returning to work due to an alleged failure to supply the Carrier's Medical Department with unspecified medical records.

The Organization contends that the Carrier claims that the Claimant finally supplied the last of the requested records on May 6, 2020, but no specifics or evidence are made a part of the record in support of the Carrier's affirmative defense claims that its withholding of Claimant from service was justified by Claimant's failure to timely provide reasonably requested records.

The Organization contends that the Carrier's own return-to-work policy does not require an employe to undergo a return-to-work evaluation unless a medical absence lasts 15 days or longer, which the Claimant's did not.

The Organization contends that the Claimant suffered a significant monetary loss because the Carrier continued to withhold him from service despite his having been released to return to service by the only medical professional who examined him. The Organization contends that the Carrier's actions were arbitrary and capricious, and an abuse of its discretion.

The Carrier contends its determination to withhold the Claimant from service until he provided additional medical documentation that he was fit for service was reasonable. The Carrier contends that the Claimant failed to confirm that the condition for which he was marked off was under control, or that he was not taking any medications that might have an impact on his ability to safely perform railroad work.

The Carrier contends that any delay in returning the Claimant to service was caused entirely by him. The Carrier contends that once the Claimant finally supplied all the necessary documentation on May 6, 2020, he was returned to work on the same day.

The Carrier contends that the 15-day threshold in the Return-to-Work guidelines is nothing more than a guideline and the Carrier retains the discretion to review fitness for duty on a case-by-case basis. The Carrier contends that the Organization has failed to prove any violation of the controlling Agreement.

Where there are questions concerning an employee's fitness for duty, a Carrier is afforded a reasonable time to seek and review medical and relevant records necessary to make a determination regarding fitness for railroad service. However, as noted in Second Division Award 6880,

If Carrier's finding of a physical disqualification gives rise to a dispute then the burden of proving the physical disqualification by substantial material evidence of probative value is upon Carrier. Award 5847, 6561.

This has often been referred to as the "risk of fallibility," as described by Referee Dana Eischen in Second Division Award 7033, and has been repeatedly placed upon the Carrier.

The Carrier was entitled to a reasonable period of time to review the Claimant's fitness to return to service, but here, the Carrier has not sufficiently explained why it took six weeks to confirm what it had learned on March 23, 2020 - the Claimant was ready to return to service. The Claimant should not be made to bear the cost of the Carrier's six-week delay to confirm the medical opinion it had already received.

AWARD

Claim sustained.

ORDER

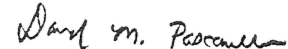
This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is signed by the parties.



Scott M. Goodspeed,
Carrier Member



Kathryn A. VanDagens,
Chairman



David M. Pascarella,
Employee Member

Dated: 2-23-2026