AWARD NO. 331
Case No. 331

Organization File No. B15906916
Carrier File No. 2016-206311

PUBLIC LAW BOARD NO. 7163

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

STATEMENT OF CLAIM:

1. The Agreement was violated when, beginning on March 30, 2016 and continuing up to and including April 28, 2016, the Carrier improperly withheld Mr. B. Clark from service without just or sufficient cause (System File B15906916/2016-206311 CSX).

2. As a consequence of the violation referred to in Part 1 above, Claimant B. Clark shall now be '... compensated One Hundred Sixty Eight (168) Hours Straight Time and all overtime worked by 6F02, at his respective rate of pay, and all time credited to vacation and retirement, account of the carrier's violation of the rules of the working agreement and this obvious loss of work opportunity.' (Employes' Exhibit 'A-1')."

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.

The record before us reflects that Claimant self-referred to the Carrier's Employee Assistance Program ("EAP") on March 30, 2016 because of a serious alcohol addiction. Carrier says it then had probable cause to believe that Claimant might be in violation of Rule G. It consequently removed

him from service pursuant to Appendix T of the Agreement, which states, in pertinent part, as follows:

> 1. If the Carrier has probable cause to believe that a Rule G violation has been committed and no other rule violation has occurred, the situation will be handled in the following manner:
>
> A. Employee will immediately be removed from service.
>
> B. When this occurs, the employee does have the right to request a drug and/or alcohol test in connection with the apparent Rule G violation. Such employee will be informed of his/her right in that regard.
>
> C. If the employee requests to be tested under Paragraph B, he/she must provide both urine and blood samples.

Claimant was then told to report for treatment on April 4, 2016. When he failed to do so, the Carrier's Chief Medical Officer and the EAP Manager advised that he be withheld from service for his personal safety and the safety of others until an evaluation could be completed. According to the Carrier, Claimant did not schedule this evaluation until the end of April. Upon completion of the evaluation, Claimant was released to report for work on April 28, 2016, while he received outpatient treatment. During the time he was out of service, the Carrier compensated him for five workdays.

In deciding this case, we need not determine whether Appendix T is applicable when an employee self-refers. When Claimant reported to his supervisor that he was suffering from a substance abuse problem, it then became imperative that the Carrier withhold him from service until it could be determined that he did not present a danger to himself, his fellow employees, or the general public. Claimant's self-referral raised a question as to his fitness for duty. In Third Division Award 42762 between these parties, and with the Neutral Member herein sitting as Referee, the Board cited Third Division Award 41393, stating:

> It is well-established that the Carrier may withhold employees from work pending medical determination of their fitness for duty; indeed, some Awards have indicated that the Carrier ". . . has a duty to remove from service employees who are physically unqualified for their jobs." (Third Division Award 25186) The Organization is correct that the Carrier's latitude to withhold employees is not unfettered, but that latitude is broad. The Carrier must have a "rational basis" for its determination, or "reason to believe the employee's continued service may jeopardize his health or safety, or that of his fellow workers." (Second Division Award 12193)

In that case, the Board, following Award No. 41393, ruled that the Carrier would be liable for payment to the claimant therein for the time held out of service because he was ultimately returned to work by his doctor without treatment or restrictions. However, the Board mitigated the Carrier's damages by holding the claimant responsible for his own delay in obtaining a medical examination. The same holding must apply here. In Claimant's case, it is apparent that the only obstacle to his return to work was his own delay in obtaining the required evaluation.

In consideration of the record before us, we find that Claimant is entitled to no more than the five days' pay he already received.

AWARD: Claim denied.

Barry E. Simon
Chairman and Neutral Member

Andrew Mulford
Employee Member

Katrina Donovan
Carrier Member

Dated: 2/4/19
Arlington Heights, Illinois