

PUBLIC LAW BOARD NO. 7163

CASE NO. 590

AWARD NO. 590

Brotherhood of Maintenance of Way Employees Division)	
of the International Brotherhood of Teamsters)	
)	
and)	Arbitration Decision
)	and Award
CSX Transportation, Inc.)	
)	
Carrier File: 21-94231)	
BMWE File: D606020)	

I. STATEMENT OF THE CLAIM

∴ “Claim of the System Committee of the Brotherhood that:

1. The Carrier’s disqualification of Mr. C. Berry as a track inspector, by letter dated October 28, 2020, due to his alleged failure to be medically cleared to operate a company vehicle, was arbitrary, unsupported, unwarranted and in violation of the Agreement (System File D606020/21-94231 CSX).
2. As a consequence of the violation referred to in Part 1 above, Claimant C. Berry shall have the disqualification overturned and ‘... the Carrier must clear all mention of the matter from Mr. Berry’s personal record, immediately return Mr. Berry to his position as a track inspector with rights and benefits unimpaired and compensate him for all loss suffered. This loss includes, but is not limited to, all pay rate differences, any straight time, overtime, double-time or other Carrier provided compensation lost as a consequence of the disqualification. It also includes healthcare, credit rating, investment, banking, mortgage / rent or other financial loss suffered as a consequence of the disqualification.’ (Employee’s Exhibit ‘A-2’).”

II. FACTS

The Claimant has been an employee for the Carrier for 15 years. He has had a genetic heart defect since birth, resulting in hypertrophic cardiomyopathy and arrhythmias. This

condition has been managed by a defibrillator implant. He was hired by the Carrier after passing a medical exam and with knowledge of his medical condition, which has been treated.

In 2019, the Claimant sought medical treatment after his defibrillator implant stopped working. On October 28, 2020, after a medical examination, Dr. Craig Heligman, the Chief Medical Officer of CSX, determined that due to the Claimant's deteriorating condition, he was no longer able to operate a vehicle because he could suddenly become incapacitated, without warning.

In September 2020, the Claimant applied for and was awarded a track inspector position in the yard. To accommodate his medical condition and his inability to drive a company vehicle, a driver was assigned to accompany him at all times during the performance of his duties.

After starting his new job, it quickly became apparent to management that staffing issues impacted the Carrier's ability to assign a driver for the Claimant. Without a driver always available, the Claimant was at times prohibited from traveling long distances to inspect, transport equipment and tools, and make repairs. By October 2020, management realized it had miscalculated how onerous it was to have an inspector on the job who was unable to drive.

On October 22, 2020, the Claimant was notified that he had been disqualified from his position as a track inspector. On October 28, 2020, the Organization filed a claim.

On November 11, 2020, the Organization submitted a letter from the Claimant's personal physician indicating that his medical condition was "well managed" and that he was able to return to driving a vehicle. Upon review of this report, the Carrier's physician requested a consultation with the Claimant's physician and cited medical literature which contraindicated the clearance to drive. The Claimant's physician did not reply. Dr. Heligman stated at the investigatory hearing that it was his belief that the Claimant's physician, while stating that the Claimant could return to driving, did not sufficiently explain whether the Claimant's condition was safe enough to operate a CSX vehicle or equipment, or consider the risks related to the kind of work the Claimant was performing. He also stated that despite his attempts to contact her and

discuss his concerns, the physician did not discuss the risk of sudden incapacitation. He explained that the criteria for allowing someone to operate a personal vehicle is not the same as the Carrier uses to determine fitness for operating a Carrier vehicle.

Based upon the entire record, including information from the investigatory interview, the Carrier continued to contend that the Claimant was no longer able to fulfill the duties of a track inspector. It believed that it would be unsafe for him to drive, to haul in derails, or lock out switches between both ends of the yard, and that the risk of being suddenly incapacitated on the job was too great.

III. POSITIONS OF THE PARTIES

Organization's Position

The Organization argues that the disqualification of the Claimant as a track inspector, due to the Carrier's determination that he was prohibited from operating a Carrier vehicle, was arbitrary, unsupported, unwarranted, and in violation of the Agreement based upon a report, from the Claimant's own physician, that he was able to return to work.

Carrier's Position

The Carrier contends that there was sufficient evidence to conclude that the Claimant was not medically able to operate a vehicle. It states that the Claimant's medical condition had deteriorated to the level where he could suddenly become incapacitated. It explained that this caused a heightened safety risk for the Claimant. The Carrier argues that the Organization failed to prove the Claimant's condition was not a safety risk.

The Carrier further contends that since the Claimant's medical condition prohibited him from driving a Carrier vehicle, he could not hold the track inspector position. This included the inability to carry all the necessary tools to fix tracks when required, perform track inspections, and being vulnerable without a vehicle if something were to happen.

The Carrier also noted that it tried to make every effort to provide an accommodation for the Claimant to be able to perform in his position, but ultimately it could not. It was unable to provide a permanent driver for an employee to perform a job. It therefore argues that its decision to disqualify the Claimant from the track inspector position was not arbitrary, capacious, or unreasonable.

IV. DECISION


The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.


The Board finds that the Carrier's decision to disqualify the Claimant from the track inspector position was not arbitrary, capacious, or unreasonable. There is no dispute that the Claimant's medical condition had deteriorated and that the Carrier's physician determined that he was prohibited from driving a Carrier vehicle. This decision was based upon a review of the Claimant's medical record and medical literature regarding his condition and the risk of incapacitation. The failure of the Claimant's physician to respond to questions and concerns posed by the Carrier's physician must be weighed against the Organization. We find that the testimony and medical opinion of the Carrier's physician must be given great weight regarding the Claimant's fitness for duty and ability to drive a Carrier vehicle.

While management initially believed that the Claimant could be accommodated by assigning a driver to him, it was subsequently unable to do so due to the lack of available staffing. There was no evidence that its decision to disqualify him was based on anything but an unintentional miscalculation of its ability to provide him with a permanent driver. Consequently, the disqualification was proper.

V. AWARD

The claim is DENIED.



Casey Summers
Organization Member

John Ingoldsby
Carrier Member

Sheila Mayberry, Chair and Neutral Member
December 13, 2024