

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 7426

AWARD NO. 7, (Case No. 7)

**BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYEES DIVISION - IBT RAIL CONFERENCE**

vs

UNION PACIFIC RAILROAD COMPANY (SPWL)

William R. Miller, Chairman & Neutral Member

T. W. Kreke, Employee Member

B. W. Hanquist, Carrier Member

Hearing Date: September 22, 2010

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier withheld System Ballast Regulator Operator M. A. Williams from service beginning on August 21, 2009 through September 14, 2009 (Carrier's File 1526100).
2. As a consequence of the violation referred to in Part 1 above, Claimant M. A. Williams shall '...now be compensated for one hundred twenty (120) straight time hours, any lost overtime hours and including any and all benefit losses suffered by him from August 21, 2009 through September 14, 2009. Payment shall be in addition to any compensation he may have already received.' (Employee's Exhibit 'A-1')."

FINDINGS:

Public Law Board No. 7426, 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.

The undisputed facts are that Claimant holds seniority in the Track Sub-department Oregon Division, Western Seniority District and was assigned and working as a Ballast Regulator on System Gang 8836 prior to the date the events surrounding this dispute arose. On August 10, 2009, Claimant was involved in an accident when he ran through a switch. In accordance with Carrier policy, the Claimant was required to provide a urine sample for drug testing. The Claimant's urinalysis tested negative for illegal drugs. Claimant returned to duty and eleven days later on August 21, 2009, he was verbally advised that he was being withheld

from service pending the results of a medical review and clearance in accordance with Section 2.5b of the Carrier's Medical Rules. After passing the medical review, the Claimant returned to work on September 15, 2009.

It is the Organization's position that there was a substantial and undue delay in returning the Claimant to duty following the September 1st medical release. It argued that Claimant with 37 years of exemplary service was involved in a minor incident wherein his Ballast Regulator machine traveled through the wrong side of a track switch. No serious damage to the machine resulted and no personal injuries occurred after which Claimant was given a drug test. It asserted that he tested negative for illegal drugs and returned to duty without restriction and performed his duties without further incident. It further argued that the Carrier, subsequently, improperly removed him from service on August 21st, telling him that he was being withheld from service pending the results of a medical review.

Lastly, the Organization argued that the Claimant followed the Carrier's instructions and in a letter of September 1, 2009, his personal physician explained that the Claimant was taking medications for several medical conditions and if he took them in the prescribed manner he was fully capable of performing his job. According to it, the letter was faxed and mailed to the Carrier on September 1st. It further argued that if the Carrier had any justification to withhold the Claimant, he should have been released within three days of September 1, 2009, the date Dr. Herold, Claimant's personal doctor determined that Claimant was fit for service. It concluded by requesting that the Claim be sustained as presented.

It is the position of the Carrier that prior to the incident which gave rise to the drug testing screen of the Claimant he was caught dozing. Later, after the accident, it was discovered that he was taking multiple medications that had the potential for impairment. It argued that the Claimant was ingesting Zoloft daily, Klonopin when needed, Ibuprofen daily, Norco daily and Nexium daily. According to it several of those drugs could cause dizziness and drowsiness which is why he was removed from service for his safety and the safety of others. The Carrier closed by stating that its actions were reasonable and done in a timely manner and it asked that the Claim remain denied.

The Board has thoroughly reviewed the record and recognizes that it is well established by arbitral precedence that the Carrier has a right to withhold employees from duty for medical reasons. The issue in this dispute is whether or not the Claimant was withheld from duty for an unreasonable period of time without good cause.

It is clear that the Carrier was justified in removing the Claimant from service on August 21, 2009, eleven days after the accident on August 10, 2009, after discovering that the medications he was taking could cause drowsiness. That information coupled with the fact that he was found dozing on August 10th prior to the accident gave the Carrier a significant reason to

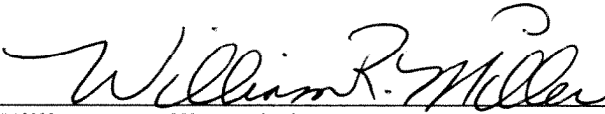
remove him from service for his and other's safety. The Organization argued that Claimant's doctor released him for duty on September 1st. A review of that letter indicates that it was less than a release as it stated in pertinent part the following:

"He is currently taking medications for several medical conditions. If he takes his medication in the manner prescribed he is fully capable of performing his job."

The letter did not explain whether the Claimant was taking his medication in the prescribed manner nor did it offer any diagnoses to support the use of the medicines that there were being taken. On September 2nd the Health Medical Services Department (HMSD) contacted the Claimant's doctor and requested additional information regarding unanswered questions about the medicines he was taking. Subsequently, on September 10th the physician forwarded the necessary information which was reviewed the following day Friday, September 11, 2010. The Claimant was advised on Monday, September 14, 2010, he was okay for service and he returned to work on September 15, 2010. The Board finds and holds that once the Carrier was provided the necessary medical documentation the Claimant was returned to service in a timely manner, therefore the Claim will remain denied.

AWARD

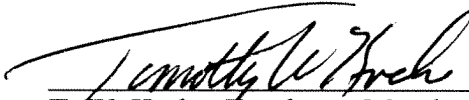
Claim denied.



William R. Miller, Chairman



B. W. Hanquist, Carrier Member



T. W. Kreke, Employee Member

Award Date: January 18, 2011