

PUBLIC LAW BOARD NO. 7633

Brotherhood of Maintenance  
of Way Employees Division - IBT

and

Union Pacific Railroad Company  
(Former Missouri Pacific Railroad Company)

Case No: 108  
Award No: 108

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

1. The Carrier's refusal to allow Mr. M. Garrett to return to service beginning on June 5, 2017 and continuing thereafter was unwarranted, arbitrary and in violation of the Agreement (System File UP524JF17/1688691 MPR).
2. As a consequence of the violation referred to in Part 1 above, the Carrier shall provide Claimant M. Garrett with eight (8) hours of compensation per day at his respective straight time rate of pay and any all overtime accumulated by the employee working Claimant's position, beginning June 5, 2017 and continuing."

FINDINGS:

Public Law Board No. 7633, upon the whole record and all the evidence, finds the parties involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction of the dispute herein; the parties were given due notice of hearing before this Board and they participated therein.

On July 9, 2016, Claimant, a Flagging Foreman, was seriously injured in an off-duty, non-work-related motorcycle accident. Unfortunately, during his hospital treatment a catheter was placed in his carotid artery instead of in his carotid vein. This resulted in Claimant suffering multiple strokes. The Carrier's Associate Medical Director reviewed Claimant's medical history and memorialized that: "*Due to multiple CVA [strokes], it is determined that he is at increased safety risk for 5 years per FMCSA medical guidelines, which UPRR follow for making FFD [Fitness for Duty] determination . . . he will need restrictions for sudden incapacitation for 5 years from date of CVA, or through July 2021, when they can be re-evaluated.*" On May 31,

2017 Claimant was notified of these work restrictions, including that he is essentially prohibited from *operating vehicles or machinery; working on or near moving trains, freight cars or locomotives; and working on 1-man or 2-man gangs*. The notification informed him that “*these restrictions cannot be accommodated by your supervisor*”, and that Claimant could “*exercise [his] seniority in accordance with the agreement.*”

The Organization appealed the determination and the Carrier denied the appeals. The dispute was not resolved during a settlement conference and progressed to arbitration. This matter is now before the Board for final and binding resolution. The Board has carefully reviewed the entire record in this case, including the arguments and awards provided in support of the parties’ respective positions, whether or not specifically addressed herein.

It is axiomatic that Carriers have a duty of care for the safety of employees, their co-workers, and the general public. It is presently undisputed that the Carrier can set *reasonable* medical standards and qualifications.

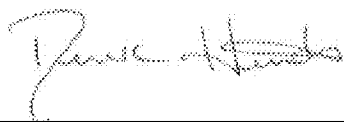
Claimant has been medically determined, in accordance with industry-standard Federal Motor Carrier Safety Act (“FMCSA”) protocol, to be at “*increased safety risk for . . . sudden incapacitation for 5 years from date of CVA, or through July 2021, when [he] can be re-evaluated.*” The Carrier reasonably relied upon Claimant’s undisputed medical records in making this medical determination. It is undisputed that Flagging Foremen often operate a vehicle (and often do so alone), in performance of their duties. Thus, the Carrier had legitimate concerns about Claimant’s ability to safely perform his job while at increased risk of sudden incapacitation following multiple strokes. Contrary to the Organization’s position, the Board finds that the Carrier’s use and application of industry-standard FMCSA protocol was not unreasonable or arbitrary. Therefore, the claim must be denied.

AWARD:

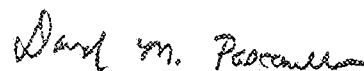
Claim denied.



Robert Grey  
Neutral Member  
Dated: October 23, 2019



Derek Hinds  
Carrier Member



David M. Pascarella  
Organization Member