

PUBLIC LAW BOARD NO. 7633

Brotherhood of Maintenance  
of Way Employees Division - IBT

and

Union Pacific Railroad  
(Former Missouri Pacific Railroad)

Case No. 80  
Award No. 80

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier continued to withhold Mr. R. Daniel from work beginning on December 18, 2015 and continuing (System File UP915PA16/1650637 MPR).
2. As a consequence of the violation referred to in Part 1 above, Claimant R. Daniel shall be compensated for one hundred sixty-eight (168) hours at the straight time rate and any overtime that Gang 9101 might have worked, as well as for any additionally accruing hours at the appropriate rates until Claimant is returned to work.”

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.

Claimant was hired on July 8, 1991. He was in service as a Crane Operator when the circumstances leading to this Claim arose. It is undisputed that in October 2015 Claimant suffered multiple acute occipital infarctions (a/k/a strokes). On December 16, 2015 the Carrier obtained first knowledge of this when Claimant applied for Medical Leave of Absence, which was granted. On December 21, 2015 the Carrier received in excess of 150 pages of medical records. The records documented that Claimant suffered multiple acute occipital infarctions (a/k/a strokes). On December 29, 2015 the Carrier’s doctor documented that because of his stroke history Claimant “*will require sudden incapacitation restrictions for his position*”, and

that Claimant's doctor had not yet cleared him to return to work. On January 6, 2016 the Carrier received a Return to Work, without restrictions, document from Claimant's primary health care physician. It is undisputed that the Carrier is also in receipt of Return to Work, without restrictions, documents from other doctors on behalf of Claimant. On January 7, 2016 the Carrier placed sudden incapacitation work restrictions on Claimant, including that he is "... *Not to operate company vehicles, on-track or mobile equipment, or fork-lifts . . . Not to operate cranes, hoists or machinery....*" On January 20, 2016 the Carrier's doctor determined that the restrictions would expire in five (5) years.

Claimant was referred to the Carrier's Disability, Prevention & Management Accommodations Team to help him find other potential positions within the Company. He was also referred by the Carrier to the Railroad Retirement Board regarding disability/sick pay.

The Organization appealed the Carrier's 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. In this case, the Board finds that the Carrier had legitimate concerns about Claimant's ability to safely perform his job following his multiple acute occipital infarctions (a/k/a strokes). As a consequence thereof, the Carrier placed reasonable work restrictions on the Claimant.

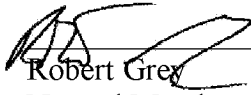
The Board finds that the issues of seizure medication, and Claimant's allegedly full recovery, are not outcome determinative on the facts and circumstances of this record. Assuming, *arguendo*, that Claimant was, is and remains fully recovered, and without sudden incapacitation, that does not negate the fact that he has been medically determined by a Carrier doctor to be at risk of sudden incapacitation for a five (5) year period.

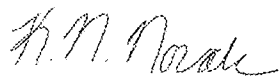
Under the facts and circumstances of this record, the Board finds that the Carrier's determination was not unreasonable, arbitrary or excessive.


Therefore, the claim must be denied.

AWARD:

Claim denied.

  
\_\_\_\_\_  
Robert Grey  
Neutral Member  
Dated: May 11, 2018

  
\_\_\_\_\_  
Katheirne Novak  
Carrier Member

  
\_\_\_\_\_  
Andrew Mulford  
Labor Member