

PUBLIC LAW BOARD NO. 7660

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

and

UNION PACIFIC RAILROAD COMPANY

**Case No: 105
Award No: 105**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

1. The Carrier's withholding of Mr. K. Brundy from service commencing March 29, 2017 and continuing was arbitrary, unsupported, unwarranted and in violation of the Agreement (System File MK-1750U-603/1686578 UPS).
2. The Carrier's failure to convene a requested Rule 50 medical panel to resolve Mr. K. Brundy's medical qualifications was arbitrary, unsupported, unwarranted and in violation of the Agreement.
3. As a consequence of the Carrier's violations referred to in Parts 1 and/or 2 above, Claimant K. Brundy shall be returned to service immediately with seniority and other benefits unimpaired, have the discipline removed from his record, afforded all compensation such as straight time and overtime compensation and afforded all credits for vacation and retirement."

FINDINGS:

This Board derives its authority from the provisions of the Railway Labor Act, as amended, together with the terms and conditions of the Agreement by and between the Brotherhood of Maintenance Employees Division – IBT (hereinafter referred to as the “Organization”) and the Union Pacific Railroad Company (hereinafter referred to as the “Carrier”). Upon the whole record, a hearing, and all evidence as developed on the property, the Board finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and that the parties were given due notice of the hearing thereon. The Claimant was ably represented by the Organization.

The Carrier prevented the Claimant, Kyle Brundy, a Track Welder with approximately 11 years of service, from returning to service after a medical disqualification related to a diagnosed eye disease and alleged vision impairment that created an unsafe work environment. The Organization claims that the record does not support the determination that the Claimant was unfit for duty. Further, it argues that based on differing opinions between the Claimant's personal physician and the Carrier's medical department the Claimant was entitled to a three-doctor panel medical review as required by Rule 50 of the Agreement.

The Organization filed its claim on May 4, 2017 stating that the Claimant was improperly prohibited from returning to work and that it was requesting a medical panel review in accordance with Rule 50. The record indicates that the Carrier denied subsequent appeals by the Organization and rendered its final written decision on September 18, 2017. The Organization rejected the Carrier's decision and moved to have the matter adjudicated before this Board.

The Board has carefully considered the record before us and find that there are no procedural errors that nullify the need to review the merits of the dispute. With regard to the merits of the claim, we find that the Organization has not met its burden of proof that the Carrier violated the Agreement when it medically disqualified the Claimant from service and that it did not agree to a review of the matter by a three-doctor medical panel.

The record supports the conclusion that the Carrier had sufficient cause to withhold the Claimant from service. The determination by the Carrier's medical department, based on the medical documentation submitted, provided the Carrier with a reasonable basis to keep the Claimant from service. The Board finds that the record does not support the Organization's assertion that the Carrier was arbitrary or unreasonable in its decision to keep the Claimant from returning to his position. The record contains medical history, provided by the Claimant's ophthalmologist that he suffers from choroidal neovascularization, which is 'severe' in the left eye and 'moderately severe' in the right eye. The Carrier's physician writes, "Both of these eye conditions (i.e., choroidal neovascularization and history of central macular edema) pose a significant permanent risk for sudden vision impairment

incapacitation due to a vitreal hemorrhage or rapid onset of macular edema, which represents an unacceptable sudden incapacitation that requires work restrictions. Even if the sudden vision impairment affects only one eye, this poses a significant safety risk due to sudden impairment in binocular vision and loss of the associated visual fields. There are no medical or surgical treatments that can reduce these risks to an acceptable level of safety risk for a worker in a safety critical position such as Mr. Brundy.”

It is well established that the Carrier has the authority to decide the physical qualifications of its employees and to disqualify those who it deems cannot meet its medical standards. The Board here is not empowered to substitute its judgment for that of the Carrier regarding the application of its medical standards where it is rationally based and reasonable. The Board must find that the Carrier acted arbitrarily, unreasonable, or in a discriminatory manner before it can set aside the Carrier’s decision that the Claimant’s eye disease disqualified him from performing his job. We find no such evidence in the record.


A review of the Medical Comments History (“MCH”) in the record supports the conclusion that there was no “dissenting opinion” between the Claimant’s physician and the Carrier’s medical staff that would require a medical panel review as provided by Rule 50. There is nothing in the record to support the Organization’s allegation that the Claimant’s personal physician submitted a diagnosis on March 31, 2017 that differed from the conclusions of Carrier’s physician and the MCH. A review of the MCH entry on April 12, 2017 reveals that the Claimant’s physician confirmed an eye disease that would disqualify him from service.

The MCH entry of April 11, 2017 notes the Claimant’s remark that another discussion with his personal physician wouldn’t change anything regarding the conclusion that he has a serious eye ailment. The May 8, 2017 note from the Claimant’s eye physician does not address the specific diagnosed eye condition he identified previously in the medical records. He provides a vague conclusion that ‘Visually speaking’ the Claimant is fit for duty. Without a specific diagnosis that contradicts the MCH records of April 12, 2017, the letter of May 8 does not constitute evidence of a “dissenting opinion” and therefore, there is no evidence to support a request for a medical panel.

In summary, we have reviewed and carefully weighed all the arguments and evidence in the record and have found that it is not necessary to address each facet in these Findings. We find that the Organization has not provided evidence that the Carrier violated the Agreement.


AWARD

Claim denied.



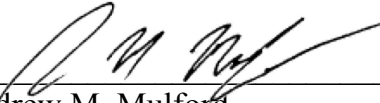
Michael Capone
Neutral Member

Dated: January 17, 2019



Alyssa K. Borden
Carrier Member

Dated: 01/17/19



Andrew M. Mulford
Labor Member

Dated: 01/17/19