

PUBLIC LAW BOARD NO. 7660

Brotherhood of Maintenance
of Way Employees Division - IBT

and

Union Pacific Railroad Company

Case No: 111
Award No: 111

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Carrier's medical withholding of Mr. M. Munoz from service, commencing May 18, 2017 and continuing, was without justification or cause (System File MK-1750U-604/1689930 UPS).
2. The Carrier's refusal to convene a requested Rule 50 medical board to determine Mr. M. Munoz's ability to return to service was arbitrary, unsupported, unwarranted and in violation of the Agreement.
3. As a consequence of the violations referred to in Parts 1 and/or 2 above, the Carrier shall provide Claimant M. Munoz with compensation for all hours he was not allowed to work commencing May 18, 2017 and continuing until he is returned to service, including both straight time and overtime hours.

FINDINGS:

Upon the whole record, after hearing, this Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter. Parties to said dispute were given due notice of hearing thereon.

Claimant M. Munoz established and maintains seniority in the Carrier's Maintenance of Way and Structures Department. During the time in question, he was working as a Ballast Regulator Operator on Gang 0068. On May 18, 2017, the Carrier removed the Claimant from service and placed him on a Medical Leave of Absence due to an alleged unidentified vision impairment issue. The Claimant was subsequently required to undergo a fitness-for-duty test at the behest of the Carrier. The Carrier's Health & Medical Services (HMS) forwarded the Claimant's medical information to Dr. Hegemann of the Rocky Mountain Center for Occupational and Environmental Health for review. Dr. Hegemann recommended that the Claimant have an ophthalmological evaluation conducted as well as a subsequent occupational evaluation. On the morning of July 3, 2017, the Claimant was fully cooperative and complied with the required ophthalmology examination without issue and was released to return to work with no restrictions by Dr. Shakoor. However, the Carrier continued to withhold the Claimant from service due to the Claimant's refusal to partake in a mental health evaluation on July 3, 2017.

By letter dated July 6, 2017, the Organization filed a claim on behalf of the Claimant. The Organization challenged how the Claimant had been removed from service beginning on May 18, 2017, without justification or cause and how its decision to continue to withhold Claimant was improper. The Organization also included an overt request for a medical panel under Rule 50 to resolve any dispute about Claimant's ability to return to duty. Rule 50 states, in relevant part that:


When an employee is withheld from duty because of his physical or mental condition, the employee or his duly accredited representatives may, upon presentation of a dissenting opinion as to the employee's physical or mental condition by a competent physician, make written request upon his employing officer for a Medical Board.

The Carrier denied this claim by letter dated July 26, 2017. The Carrier asserted that HMS did not have sufficient evidence to assess the Claimant's fitness due to the required occupational evaluation remaining incomplete. There was no "dissenting opinion" concerning Claimant's physical or mental condition as required by Rule 50. Therefore, no Rule 50 medical panel was convened. Because the parties were unable to resolve the matter on the property, the issue is now before this Board for final adjudication.


In reaching its decision, the Board has considered all the testimony, documentary evidence and arguments of the parties, whether specifically addressed herein or not. A careful review of the record convinces the Board that, under the circumstances of this case, there is insufficient evidence to support the Organization's position.

AWARD:

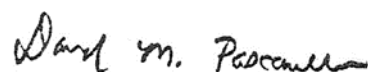
Claim denied.



Jeanne Charles
Neutral Member



Chris Bogenreif
Carrier Member
Dated: 12/02/2019



David M. Pascarella
Labor Member
Dated: 12/09/2019