

PUBLIC LAW BOARD NO. 7660

Brotherhood of Maintenance  
of Way Employees Division - IBT

and

Union Pacific Railroad

Case No: 132  
Award No: 132

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Carrier’s withholding of Mr. J. Roberts from service commencing June 10, 2017 and continuing was arbitrary, unsupported, unwarranted and in violation of the Agreement (System File T-1750U-902/1691525 UPS).
2. The Carrier’s failure to convene a requested Rule 50 Medical Panel to resolve Mr. Roberts’ medical qualifications 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, Claimant J. Roberts 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:

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.

The Claimant works as a Track Inspector and on January 28, 2017, the Claimant suffered a Transient Ischemic Attack (TIA), or stroke. Based upon a review of the Claimant’s condition, the Carrier placed the following sudden incapacitation risk restrictions on the Claimant for a one-year period:

- Not to operate company vehicles, on-track or mobile equipment, or fork-lifts.

- Not to work on or near moving trains, freight cars or locomotives, unless protected by barriers. (Clarification: This means remaining between the rails or to the field side of the track where there are adjacent tracks with less than 19-foot track centers).
- Not to operate cranes, hoists, or machinery, if these activities might create a risk of harm to others or a risk of catastrophic injury to the employee.
- Not to work at unprotected heights, over 4 feet above the ground. (Clarification: Employee can work on the beds of trucks; and employee can occupy bridges following normal safety practices).
- Must not work on 1-man or 2-man gangs (i.e., switch oiler, inspector, welder or helper job, 2-man section gang). Must have at least two additional employees on gang or at work area to accommodate the provisions of Train Approach Warning regulations (Lookout) or Train Approach Warning provisions may not be used.
- Not to perform work where decisions or actions can affect the safety of others (not to work as a Train Dispatcher or similar safety sensitive positions).
- If a new job assignment is considered, then HMS should review the functional job demands to determine if the employee can safely perform the essential functions of the job.
- These work restrictions are ongoing, but can be reassessed in January 2018, at which time a thorough medical evaluation should be done (with tests specified by Health and Medical Services).

By letter dated August 6, 2017, the Organization filed a claim on behalf of the Claimant, arguing that the Carrier's continued withholding of the Claimant was arbitrary and capricious. The Organization also requested a medical panel review under Rule 50 of the Agreement. The matter progressed in the normal fashion, and with the parties unable to reach resolution, the matter now comes to the Board.

The Organization argues a) the Carrier failed to form a medical panel under Rule 50 to determine the Claimant's medical status, and b) the Carrier failed to justify its actions of withholding the Claimant from service.

The Carrier argues a) the Carrier has a right and obligation to ensure employees are safe to perform work by enforcing reasonable work restrictions, b) the Organization has failed to meet its burden of proof in establishing a bona fide violation of the agreement, and c) the Claimant was not disciplined within the meaning of the parties' Agreement.

In the instant case, there is agreement between the Claimant's physician and the Carrier's Health and Medical Services that the Claimant suffered from a stroke. Although Claimant physician notes dated April 27, 2017 indicate the Claimant's physician would be completing paperwork to release the Claimant to return to work without restrictions, the signed release form

from the Claimant's physician verifying such is absent from the record. Furthermore, Claimant physician notes indicate the Claimant continued to experience on-going right-side weakness following the initial stroke in January 2017. Given the above, the Board has determined that there is not a dissenting opinion significant enough here to trigger a Rule 50 panel request.

As numerous boards have said, the Carrier has the right and responsibility to set proper and reasonable medical standards for its workforce. It is not the function of the Board to substitute its judgment for that of the Carrier's regarding medical determinations or the medical standards upon which it bases its decisions. That being said, the Carrier must have a rational basis for its determination and must make such determinations based upon a reasonable standard.

Based upon a review of the record, the Board finds the Carrier's decision to impose the sudden incapacitation risk restrictions on the Claimant for a one-year period to be both rational and reasonable. Carrier medical records indicate the Claimant's condition carried an elevated risk of an additional stroke for a one-year period following the initial event. Furthermore, and as indicated above, Claimant physician notes indicate the Claimant continued to experience right-side weakness following the stroke in January 2017. The Carrier's action here was not arbitrary, but rather rational and reasonable. The claim is therefore denied.

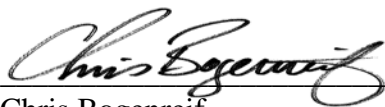
Although the Board may not have repeated every item of documentary evidence nor all the arguments presented in the record, we have considered all the relevant evidence and arguments presented in rendering this Award.

AWARD:

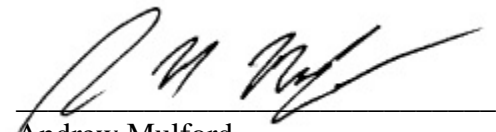
The claim is denied.



Paul Betts  
Neutral Member  
Dated: 08/01/2019



Chris Bogenreif  
Carrier Member  
Dated: 08/01/2019



Andrew Mulford  
Labor Member  
Dated: 08/01/2019