

PUBLIC LAW BOARD NO. 7660

Brotherhood of Maintenance
of Way Employees Division - IBT

and

Union Pacific Railroad Company

Case No: 164
Award No: 164

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Carrier’s medical withholding of Mr. T. Sturz from service was without justification or cause (System File B-1850U-201/1707852 UPS).
2. The Carrier’s refusal to convene a Rule 50 medical board regarding Claimant T. Sturz’s ability to return to service was arbitrary, unsupported, unwarranted and in violation of the Agreement.
3. The claim* as presented by Vice Chairman B. Rumler, by letter dated June 15, 2018, to Carrier’s representative B. Ince shall be allowed as presented because said claim was not disallowed by Mr. B. Ince in accordance with Rule 49.
4. As a consequence of the violations referred to in Parts 1 and/or 2 and/or 3 above, the Carrier shall provide Claimant T. Sturz with compensation for all hours at the straight time rate of pay and any and all hours of overtime compensation that he would have worked and earned had he not been removed from his assigned position, payment to be made at the applicable rate of pay for the position as well as any loss of round trip travel allowance from work to Claimant’s residence and back to work, Claimant must also be made whole, fully compensated and recover all loss of fringe benefits.”

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.

After an attempted suicide in Cedar Rapids, Iowa on January 13, 2018, a Fitness for Duty evaluation also known as a Manager Referral was ordered. Claimant requested and was granted a medical leave of absence to receive treatment. Claimant attended a residential treatment program for one month and continued to work with the Carrier's Employee Assistance Program (EAP) counselors. On April 16, 2018, Claimant expressed his desire to return to work with his EAP counselor and Chief Medical Officer John Holland. After reviewing Claimant's medical records obtained by EAP, Dr. Holland conducted the Fitness for Duty evaluation. In a report dated April 22, 2018, Dr. Holland concluded that Claimant was given a General Medical Disqualification.

Following a late-March, 2018 conference call and by letter dated April 27, 2018, the Carrier informed the Claimant that it had medically reviewed his case and determined that his condition was such that it could not be accommodated, consistent with any exercise of his accumulated seniority under the Agreement.

The Organization called for this immediate allowance of the claim as presented, and otherwise attempted thereafter to resolve the dispute in the customary and usual manner for its part, including via conferencing the claim on December 4, 2018, but the parties were ultimately unable to resolve the dispute and the matter now comes before this Board for final adjudication.

The Organization contends that the Carrier violated the Agreement when it continually withheld the Claimant from service and then failed to support the basis for its determination to, effectively, permanently medically disqualify him. The dispute also involves the Carrier's separate and distinct violation of the Agreement in failing to comply with its obligations under Rule 50 to establish a medical board to resolve this dispute.

The Organization acknowledges that while the record establishes that the Claimant once experienced untreated mental health issues, he sought and was granted a medical leave of absence in order to seek appropriate treatment. The Organization maintains that the record does not establish any valid medical reason for medically disqualifying the Claimant permanently after he sought such treatment and returned to service on that basis, without any need for further restrictions. As such, the Organization submits that it

has established its prima facie case and, further, that the Carrier has failed to establish a valid and proper medical reason for having disqualified and withheld Claimant from service permanently.

The Carrier argues they possess the managerial right and obligation to set and enforce medical workplace standards. Arbitral precedent, historical practice, and governmental regulation clearly support Carrier's right to ensure the fitness and ability of its employees to safely perform their assigned duties.

The Carrier explains that due to the nature of Claimant's serious chronic psychiatric conditions, Claimant posed an unacceptable risk for behavior or actions which would place him and others at a significant risk for substantial harm while working in any other safety sensitive position. The Carrier urges that as a federal motor carrier, Union Pacific Railroad has a clear duty to the general public and industry to make such safety determinations. This assessment is critical to ensuring the well-being of the employee, the safety of other employees, and protecting the general public.

The Carrier maintains, the Organization failed to prove its case. Carrier did not violate the parties' Agreement when it removed Claimant from service following his attempted suicide and associated Manager Referral. After reviewing a detailed mental health evaluation Carrier issued a General Medical Disqualification restricting Claimant's return to working any railroad position. This claim seeking Claimant's reinstatement together with lost wages and allowances while Claimant was out of service following his Manager's Referral for a Fitness for Duty evaluation should be denied or dismissed in its entirety.

In reaching its decision, the Board has considered record evidence and arguments of the parties, whether specifically addressed herein or not. A careful review of the record convinces the Board that the Organization provided insufficient evidence to establish a violation of Agreement.

Regarding the procedural objection raised by the Organization that the Carrier's response was defective because it violated Rule 49 by not providing a reason for the denial, the Board does not find this as a basis to allow the claim. The Organization argues that the Carrier provided a "generic" reason for the denial and departed from its practice of providing detailed reasons for the denial. While providing a generic reason does not serve the process by fostering on-property resolution of a claim, it does not violate the plain language of Rule 49. Rule 49 requires written reasons for disallowing a claim. The Carrier stated in its denial dated July 27, 2018 the "reason" as the Organization's failure to "provide documents or evidence in support of its allegations."

On the merits, there is no question that the Carrier has the right and obligation to withhold employees from service who are medically unqualified. However, this claim is

also regarding the Carrier's refusal to convene a Medical Review Panel pursuant to Rule 50 where there is a dissenting medical opinion from that of the Carrier. In this case, the Carrier was within its right to withhold Claimant from service for medical reasons. The Carrier's HMS disqualified Claimant permanently on April 22, 2018 based on a thorough review of Claimant's medical records. The claim challenging this decision and requesting that a medical review board be convened was filed on June 15, 2018. At that time, Claimant had not provided a dissenting medical opinion. It was not until August 20, 2018, that Claimant submitted a note from Samantha Brembgen, D.O. stating Claimant had been under her care and was "released to return to work full time with no restriction." (Att. No. 1 to Employees' Exhibit "A-6"). Rule 50 (a) allows an employee to request a Medical Board "upon presentation of a dissenting opinion as to the employee's physical or mental condition by a competent physician...." In this case, the medical note is insufficient evidence of a dissenting opinion based on the facts of this case. Due to the summary nature of Dr. Brembgen's note, it cannot be deemed as "competent." Unlike the Carrier assessment conducted by Dr. Holland, it contains no details about Claimant's diagnosis, prognosis or analysis of his mental health history. In fact, the note does not indicate whether Dr. Brembgen was treating Claimant's mental health condition at all. Given these facts, Claimant did not present a dissenting opinion as contemplated by Rule 50. *See*, NRAB Third Division Award No. 41499. The Carrier did not violate the Agreement by failing to convene a Medical Board in this case.

AWARD

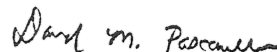
Claim denied.



Jeanne Charles
Neutral Member



William Ince
Carrier Member
Dated: March 30, 2021



David M. Pascarella
Labor Member
Dated: March 30, 2021