

PUBLIC LAW BOARD NO. 7660

Brotherhood of Maintenance  
of Way Employees Division - IBT

and

Union Pacific Railroad Company

Case No: 168  
Award No: 168

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**STATEMENT OF CLAIM:**

“Claim of the System Committee of the Brotherhood that:

1. The Carrier’s withholding of Mr. J. Johnson from service, commencing August 7, 2018 and running through September 6, 2018, was in violation of the Agreement and Carrier policy (System File A-1848U-008/1711851 UPS).
2. As a consequence of the violations referred to in Parts 1 above, the Carrier shall provide Claimant J. Johnson with compensation totaling one hundred eighty-four (184) hours at his straight time rate, as that number is the total hours Claimant spent on an unjustified Drug & Alcohol Policy suspension between August 7 and September 6, 2018. This equates to five thousand eight hundred eighty-six dollars and sixteen cents (\$5,886.16). This is compensation Claimant would have received absent the violation of our Collective Bargaining Agreement.”

**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.

In May 2018, Claimant was involved in an off duty accident where it was determined alcohol was an issue. Carrier Fitness for Duty personnel referred Claimant to Carrier's Employee Assistance Program (EAP), a counseling and referral services for employees and their families who are experiencing personal or work-related problems. Claimant underwent inpatient treatment for alcohol addiction from May 10-June 1, 2018 and was authorized to return to work. On August 7, 2018 Claimant underwent a DOT physical examination. As a result of Claimant's answers to the DOT physical examination questionnaire he was once again referred to EAP by Carrier Fitness for Duty personnel. Claimant had admitted to drinking alcohol regularly shortly after completing the above-referenced in-patient treatment for alcohol addiction. As a result of the new referral, the Carrier withheld Claimant from service pending his completion of any treatment program resulting from this EAP referral. Claimant did not make arrangements with EAP until August 16, 2018, and refused further in-patient treatment. An evaluation was scheduled for August 27, 2018 but postponed until August 31, 2018. Claimant was enrolled in an out-patient treatment program after completing the August 31, 2018 evaluation.

By letter dated September 21, 2018, the Organization filed a claim on behalf of the Claimant. The Carrier denied the claim and the parties thereafter attempted to resolve the dispute in the customary and usual manner, including conferencing the claim on March 12, 2019. The parties were ultimately unable to resolve the dispute and the matter now comes before this Board for final adjudication.

The Organization argues that Carrier's own August 1, 2017 Drug and Alcohol Policy and Manager's Drug and Alcohol Checklist therein clearly call for an assessment by at least two (2) managers before an employee can be determined to colorably be under the influence of alcohol and thereby subject to a confirming (breathalyzer) test to see if he could only thereafter be removed/withheld from service.

Carrier maintains they have the right and obligation to assess Claimant's ability to work safely. This protects Claimant and ensures his co-workers are not placed in an unsafe work environment. In this case, Claimant acknowledged he drank alcohol on a regular basis. This information was provided in response to a DOT physical examination questionnaire taken shortly after completing an in-patient treatment for alcohol addiction. This was not an on-property Manager Referral based upon "signs and symptoms" as alleged by the Organization. The goal of EAP is sobriety, which Claimant obviously did not attain. His conduct brought his fitness and ability to safely perform his assigned duties into question.


In reaching its decision, the Board has considered all the testimony, documentary evidence and arguments of the parties, whether specifically addressed herein or not. The Board's role is an appellate function. A careful review of the record convinces the Board


that the Organization provided insufficient evidence to establish a violation of Agreement.

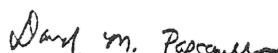
Given that Claimant was involved in an accident (albeit off-duty) involving alcohol which resulted in him attending in-patient treatment for addiction, the Carrier had the right and obligation to ensure Claimant was physically and mentally fit to return to work and perform his duties safely. This is so despite the fact that it was Claimant's answers to a DOT physical for his return to work questionnaire reflecting that he admitted to drinking eight (8) beers a week. As the Carrier states, this was a "red flag" that needed further action. One must consider the alternative to the Carrier failing to take any action and a subsequent fortuitous event occurred. Significant liability and loss could ensue. The evidence reflects that the time it took to complete the referral to the second EAP was due to Claimant's delay in scheduling. Accordingly, we do not find that the Carrier acted in an arbitrary, capricious or abusive manner in suspending Claimant's work assignment.

## **AWARD**

**Claim denied.**

  
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Jeanne Charles  
Neutral Member

  
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William Ince  
Carrier Member  
Dated: March 30, 2021

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