

PUBLIC LAW BOARD NO. 7660  
AWARD NO. 200

BROTHERHOOD OF MAINTENANCE OF WAY  
EMPLOYEES DIVISION - IBT RAIL CONFERENCE

PARTIES  
TO DISPUTE:

and

UNION PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Carrier’s medical withholding of Mr. C. Wilkin from service, commencing December 9, 2019 was without justification or cause (System File MK-2050U-603/1739505 UPS).
2. The Carrier’s refusal to convene a Rule 50 medical board regarding Claimant C. Wilkin’s ability to return to service was arbitrary, 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 C. Wilkin ‘... All lost hours at the straight time rate of pay and any and all hours of overtime compensation that would have been worked and earned by Claimant beginning 5 days after Claimant notified the Carrier of his release to full duty. Payment is to be made at the applicate rate of pay for the position as well as any loss of round trip travel from work to Claimants (sic) residence and back to work. Claimant must also be made whole, fully compensated, and recover from all loss of fringe benefits.’ (Employes’ Exhibit A-1).”

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.

Claimant was working as a System Ballast Regulator Operator when he went out on a MLOA due to a severe lumbar spine and leg injury suffered in July, 2019, as well as chronic migraines. In accordance with Claimant's Detailed Medical Comments History, his medical records submitted to date were reviewed in depth by Carrier's MRO, and he set forth each of his 7 listed conditions and what follow-up medical evaluations, tests and information are required before a FFD evaluation could be completed. These include neurologic, pulmonary, cardiology, and endocrinology evaluations and related testing as well as follow-up from his pain medicine doctor concerning the 3 prescribed pain medications (including oxycodone and oxycontin), which are prohibited for field work and which, in addition to other issues, preclude his return to work.

Carrier's MHS Department continued to be in touch with Claimant about his ongoing treatment, the need for medical records, as well as the types of evaluations and testing required. The record contains a return to work without restriction note from Claimant's doctor dated October 31, 2019, which was faxed to Carrier on December 9, 2019. The additional medical documentation submitted on behalf of Claimant at the end of December, 2019 led to a further review by HMS on March 11, 2020, with a similar listing of conditions and information needed. A follow-up review was conducted on April 30, 2020, during which additional medical records were considered including a March 24 doctor's note saying that Claimant was no longer taking pain medications, and that it was estimated he could return to work "in the next few months."

All of the information was provided to, and reviewed by, Carrier's MRO on May 15, 2020, and he determined that Claimant was not fit for duty. A phone call was scheduled with Claimant at the beginning of June to review the information and findings, but he was unable to be reached throughout the month of June. A conference call was held on July 9, 2020 with Claimant, his wife, his Organization representative, the Assistant Medical Director and MRO, which was followed by a letter reviewing the discussion, and listing Claimant's conditions and the follow-up needed to obtain a further FFD review.

The Organization filed a claim on June 19, 2020 regarding Claimant not being permitted to return to work after being released by his doctor, and requested a 3 doctor panel be established under Rule 50 due to the difference in medical opinion about his restrictions. On August 14, 2020, the Carrier denied the Organization's claim noting that Claimant has many chronic conditions preventing his return to work based upon repeated medical reviews of his records, the nature of the restricted medications he is taking, and the fact that he has failed to complete the follow-up treatments and testing required. It notes that Carrier is responsible for the safety of its employees and is entitled to set and enforce reasonable medical standards, and that HMS determination of FFD is to be accepted unless it is shown to be arbitrary or capricious. In its denial, Carrier states that there is no dissenting medical opinion about Claimant's physical or mental condition, making Rule 50 inapplicable. The Organization's August 18 appeal was denied on September 27, 2020.

The Organization argues that Claimant was improperly withheld from service following his doctor's medical release to return to work sent to Carrier on December 9, 2019, and was refused the appointment of a Medical Board under Rule 50. It notes that the facts indicate a clear dispute as to Claimant's physical condition, and that the remedy set out in Rule 50 is appropriate in this case, citing PLB 7660, Awards 56, 97, 165.

Carrier contends that there is no dissenting opinion with respect to Claimant's physical or mental condition, so Rule 50 is not triggered in this case, relying on Third Division Award 36034. It stresses that it is Carrier's obligation to ensure employees are safe to perform work and to enforce reasonable work restrictions, citing Third Division Awards 36725, 28505, 31824, 41500. Carrier argues that its continued withholding of Claimant due to his serious medical conditions and use of restricted medications was not arbitrary, capricious or in bad faith, and that the Organization has failed to meet its burden of proving that. It maintains that since Carrier is charged with the responsibility for the safety of its employees, it is entitled to rely upon the extensive review of medical documentation by its MRO and his finding that Claimant was not presently fit to return to duty, a conclusion that should not be second-guessed by a reviewing tribunal, relying on PLB 6302, Award 9. Carrier also argues that the remedy requested is excessive and speculative, relying on Third Division Award 41614; PLB 7660, Award 82.

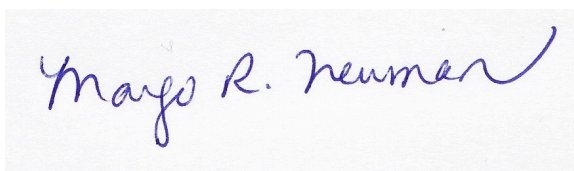
A careful review of the record convinces the Board that the Organization has failed to meet its burden of proving that Carrier's failure to find Claimant fit for duty in this case was arbitrary, capricious or in bad faith. See, e.g. Third Division Award 36725. It is well established that the Carrier has the duty and responsibility to ensure the safety of its employees and to set reasonable medical restrictions, as well as the authority to decide the physical qualification of its employees and to disqualify those who it deems cannot meet its medical standards. The Board 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. See, e.g. PLB 7660, Award 62, 94; First Division Award 28138.

The record makes clear that Carrier's HMS, and its MRO, carefully and continually reviewed Claimant's submitted medical documentation in conducting its FFD process. In our review of such records, we find no dissenting opinion as to Claimant's physical or mental condition which would require Carrier to engage in the Medical Board

process outlined in Rule 50. Based upon these undisputed medical records, Claimant suffered from 7 different medical conditions, and due to the serious nature of some of them, it was reasonable for Carrier to request additional specialist evaluations and records to enable it to determine if he was fit to return to work, and, if so, with what restrictions. Carrier was within its rights to enforce established prohibitions for specific prescribed narcotic medications due to the dangerous nature of the work performed by Claimant. It is generally accepted that Carrier has the right to set and enforce medical standards for, and to determine the physical fitness of, its employees, and that, in doing so, has the right and/or obligation to accept the recommendations of its MRO. See, e.g. Third Division 31824; 15387, 25417. Claimant was informed of Carrier's medical concerns and its additional documentation requirements on an ongoing basis, and his medical records reveal that a number of his conditions support the conclusion that there was a rational basis underlying Carrier's determination that he was not FFD in July, 2020. Accordingly, the claim must be denied.

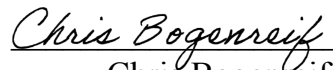
AWARD:

The claim is denied.



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Margo R. Newman  
Neutral Chairperson

  
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Chris Bogenreif  
Carrier Member

  
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John Schlismann  
Employee Member

Dated: January 18, 2023

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