

PARTIES) **UNION PACIFIC RAILROAD COMPANY**
)
)
TO) **VS.**
)
DISPUTE) **BROTHERHOOD OF MAINTENANCE**
) **OF WAYEMPLOYES DIVISION -IBT**
) **RAIL CONFERENCE**

Public Law Board consisted of the regular members and, in addition, Referee Meeta A. Bass when this Award was rendered.

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- 1. The Carrier’s medical withholding of Mr. I. Chavez from service, commencing March 16, 2022 was without justification or cause and in violation of the Agreement (System File JN-2250U-404/1772984 UPS).**
- 2. The Carrier’s refusal to convene a Rule 50 Medical Board regarding Claimant I. Chavez’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, Claimant I. Chavez shall now ‘... be afforded a Medical Panel immediately. In addition, the Organization demands that Claimant be made whole for all hours he was not allowed to work starting on March 16, 2022. This shall include all hours Claimant would have been entitled, both straight time and overtime, per diem, all travel expenses related to Claimant’s continued attention to this matter and any additional expenses accrued by Claimant had this violation not taken place. This is compensation that Claimant would have received absent the violation of our Collective Bargaining Agreement. ***’ (Employees’ Exhibit ‘A-1’).”**

FINDINGS:

The Board, upon the whole record and all the evidence, finds that:

The Carrier or Carriers and the Employee or Employees involved in this dispute are, respectively, Carrier and Employee within the meaning of the Railway Labor Act, as approved on June 21, 1934. The Board has jurisdiction over the dispute involved herein. Parties to said dispute were given due notice of hearing thereon.

The Claimant requested leave on November 29, 2021. The Claimant was involved in an off-duty vehicle accident and suffered a severe medical injury in November of 2021. On January 12, 2022, the Claimant's physician's nurse provided a general statement indicating the Claimant could return to weight bearing as tolerated and was waiting for the Claimant to be cleared from all other restrictions by the neurosurgeon and hand surgeon. On January 20, 2022, the Claimant's physician's nurse provided a general statement stating the Claimant may return to work on March 3, 2022. On January 21, 2022, the Claimant's physician assistant provided a general statement stating the Claimant could return to work without restrictions on March 3, 2022. After reviewing the Claimant's file, the HMS physician informed the Claimant of a five-year restriction from performing Maintenance of Way duties on March 16, 2022.

On March 25, 2022, the Claimant's nurse practitioner submitted a letter stating the Claimant is no more at risk for these symptoms than the average person per the expressed opinion of the physician. On April 6, 2022, the Organization requested a Medical Board per Rule 50 and attached the nurse practitioner's letter from March 25, 2022. The Carrier did not convene a Medical Board. On or about September 26, 2022, the Claimant submitted a dissenting opinion through the Carrier's patient portal signed on behalf of MD Muhammad Riaz, reiterating the contents of the March 25th nurse practitioner's letter. The Carrier did not convene a Medical Board.

The Organization filed a claim by letter dated April 6, 2022, and the Carrier denied the same on May 25, 2022. The Organization advanced the appeal by letter dated June 1, 2022, and the Carrier denied the same by letter dated July 6, 2022. A formal conference was held with no resolution of the claim on August 18, 2022. The Organization submitted a post-conference letter on August 19, 2022, requesting the Carrier re-evaluate their position or the matter would be advanced to the National Railroad Adjustment Board. There was no change in the Carrier's position. This matter is before this Board for a final resolution of the claim.

Controlling herein is Rule 50 of the Agreement which, in pertinent part, reads:

“RULE 50 - PHYSICAL DISQUALIFICATION

(a) DISQUALIFICATION - 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.

(b) **MEDICAL PANEL** - The Company and the employee will each select a physician to represent them, each notifying the other of the name and address of the physician selected. These two physicians will appoint a third neutral physician, who will be a specialist on the disability from which the employee is alleged to be suffering.

(c) **MEDICAL FINDINGS** - The Medical Board thus constituted will make an examination of the employee. After completion they will make a full report in duplicate, one copy to the Company and one copy to the employee. The decision of the Medical Board on the condition of the employee will be final...

(e) **COMPENSATION** - If there is any question as to whether there was any justification for restricting the employee's service or removing him from service at the time of his disqualification by the Company doctors, the original medical findings which disclose his condition at the time disqualified will be furnished ...

The Organization contends the Carrier violated the Agreement when it withheld the Claimant from service contrary to the professional medical statements, which held the Claimant could return to work without restriction and did not pose a greater risk of the symptom than the average person. The Organization claims the Carrier's decision to withhold the Claimant from service resulted in an arbitrary physical disqualification in violation of the Agreement since his physician had cleared him to work without restrictions. The Organization argues the Carrier violated Rule 50 when the Carrier placed the Claimant on a 5-year restriction without convening a Medical Board. The Carrier's right to set medical standards and qualifications is not absolute or unchecked; the Carrier had a contractual obligation to convene a Medical Board to determine fitness for duty, and when the Carrier did not, its action became arbitrary and in violation of Rule 50. The Organization requests the claim be sustained.

The Carrier contends the Organization failed to prove a contractual violation of the parties' Agreement. The Carrier views this claim as a direct challenge to its managerial rights to set and enforce medical standards. The Carrier asserts its right and responsibility to establish and enforce medical workplace standards as a federal motor carrier, aligning with its duty to ensure public and industry safety. The Carrier claims there was a valid review of the Claimant's health and condition, and any restrictions placed on the Claimant were directly related to this severe injury. According to the Carrier, the Claimant was required to submit additional medical

documents to determine his fitness for duty. The Carrier's HMS department communicated with the Claimant throughout the process and caused no undue delay in its review. The Carrier argues the diagnosis the Claimant sustained posed serious concerns for the Claimant to perform the duties of his assignment and the safety of others due to the risk of sudden incapacitation resulting in the restriction for five years. The Carrier argues the Organization did not provide any dissenting doctor's opinion to necessitate a medical panel. The Carrier asserts the Claimant was not disqualified, and it was not obliged to provide written notice of a nonexistent disqualification. The Carrier maintains the Organization failed to prove any rule violations or establish compensation entitlement.

After a careful review of this record and analysis of Rule 50, the Board finds the application of Rule 50 is triggered when a dissenting opinion of a physician is presented. Despite the several medical statements provided to the Carrier on or before September 26, 2022, a dissenting opinion of the neurosurgeon, a competent physician, was submitted on or about September 26, 2022. This Board recognizes the Carrier's right to thoroughly review an employee's medical documentation to determine whether they can safely perform the functions of their assignment. However, the parties have negotiated a process to be followed when an employee's physical condition is in question by competent physicians, emphasizing the importance of a Medical Board's evaluation. However, in this case, the Carrier failed to adhere to this procedure, violating Rule 50. As a result of this violation, this Board grants the Organization's request. This Board directs the Carrier to comply with the provisions of Rule 50, including convening a Medical Board to evaluate the Claimant's physical condition at that time. Furthermore, this Board directs the Carrier to provide appropriate compensation as of the date of dissenting opinion to the Claimant if it is determined by the Medical Board the restriction from service was unwarranted. This decision is made in accordance with the Rule 50, principles governing the arbitration process, and the cited, relevant arbitral precedents, and upholds the integrity of the Agreement between the parties involved.

AWARD

Claim sustained in accordance with these findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

/s/ Meeta A. Bass

Meeta A. Bass
Neutral Chairperson

Jennifer McNeil

Jennifer McNeil

Carrier Member

Dated: 04/29/2024

John Schlismann

John Schlismann

Organization Member

Dated: April 29, 2024