

PUBLIC LAW BOARD NO. 7660  
AWARD NO. 40

BROTHERHOOD OF MAINTENANCE OF WAY  
EMPLOYEES

PARTIES  
TO DISPUTE:

and

UNION PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier medically withheld Mr. J. Small from service beginning on February 5, 2014 and continuing to June 2, 2014. (System File A-1448U-201/1610162 UPS).

2. As a consequence of the violation referred to in Part 1 above, the Carrier shall promptly compensate Claimant J. Small for all hours he was not allowed to work commencing February 5 and continuing to June 2, 2014.”

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 is a System Ohio Crane Operator with almost 24 years of service, who was working in Marysville, Kansas at the relevant time. The facts are not in dispute. On February 4, 2014, two police officers reported to Carrier that they noticed Claimant acting erratically at a local gas station. They did not confront him. Claimant’s Manager performed

a signs and symptoms test under Carrier's Drug & Alcohol (D&A) Policy, determining that Claimant's speech and behavior could be consistent with drug use, removed him from service, and referred him to EAP. He did not order a drug and alcohol test. EAP placed him on a LOA on February 5, he had a medical evaluation at a provider of his choice on February 25, who recommended that he complete outpatient substance abuse treatment services. EAP referred Claimant to such services, and he completed what was required on April 29, at which time a Discharge Summary was forwarded. Claimant underwent a return to work D&A test within 48 hours. The results of the test were not received by Carrier from the lab until May 28, 2014, at which point Claimant was released to return to work. He received supplemental sick benefits during the almost 4 month period he was out of service. The EAP Manager submitted a statement indicating that, on average, an employee is out due to a positive drug test or Manager Referral between 45 and 60 days.

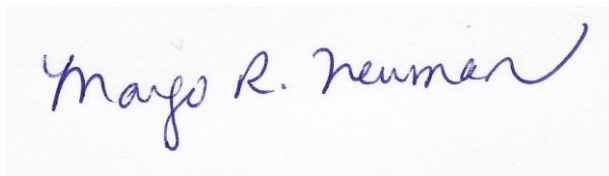
The Organization argues that Claimant was withheld from service arbitrarily, as the Manager did not order the performance of a drug test. It asserts that 4 months was an unreasonable period of time to keep Claimant out of work without a positive drug test and no proven substance abuse problem, and notes that there is no explanation for why it took so long for Carrier to receive the test results from the lab. It requests compensation for Claimant, at the very least, for the excessive delay in returning him to work caused by its flawed process.

Carrier contends that the Manager was acting in compliance with Section 20.1 of the D&A Policy by utilizing the Manager Referral process in this case, and acted reasonably in removing Claimant from service until after his compliance with EAP requirements. It argues that it is management's prerogative to set reasonable medical standards and ensure employee safety, as it did in this case. Carrier maintains that Claimant was not treated any differently from any other employee under the D&A Policy, and was returned to work after it received notice that he completed his EAP program and passed the D&A test. It asserts that the Organization failed to meet its burden of proof in this case.

On the basis of the entire record, the Board is of the opinion that management acted reasonably under the circumstances and properly referred Claimant to EAP on February 4, 2014, removing him from service until he successfully completed the recommended program. That being said, the record is devoid of any explanation why it took Carrier 30 days to receive Claimant's drug test results. That period is excessive, especially considering the fact that Claimant had already been out of service for almost 90 days, when the record establishes that 45-60 day is the average length of time for employees to remain out of service as a result of a positive drug test or Manager Referral. Carrier had the responsibility to act expeditiously to return Claimant to service once he met the requirements of the EAP. It must be held responsible for the excessive delay in obtaining results from its drug testing laboratory. Under the facts of this case, the Board concludes that it would have been reasonable for Carrier to receive the lab test results, and return Claimant to work, within 14 days of the date he took the drug test. See, e.g. PLB 7099, Award 7; Third Division Awards 40332; 29243. Therefore, Carrier shall compensate Claimant for the delay in returning him to work between May 15 and June 1, 2014.

AWARD:

The claim is sustained, in part, in accordance with the Findings.



---

Margo R. Newman

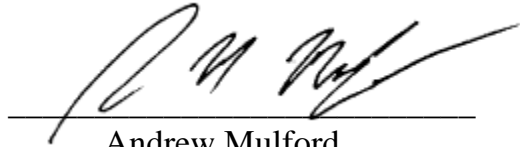
Neutral Chairperson

Dated: November 27, 2017



---

K. N. Novak  
Carrier Member



---

Andrew Mulford  
Employee Member