

PUBLIC LAW BOARD NO. 7660

**BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYEES DIVISION - IBT**

and

UNION PACIFIC RAILROAD COMPANY

**Case No: 97
Award No: 97**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

1. The Carrier's medical withholding of Mr. C. Hunt from service, commencing January 18, 2017 and continuing, was without justification or cause (System File MK-I750U-601/1681444 UPS).
2. The Carrier's refusal to convene a requested Rule 50 medical board to determine Mr. C. Hunt'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, the Carrier shall provide Claimant C. Hunt with compensation for all hours he was not allowed to work commencing January 18, 2017 and continuing until he is returned to service, including both straight time and overtime hours."

FINDINGS:

This Board derives its authority from the provisions of the Railway Labor Act, as amended, together with the terms and conditions of the Agreement by and between the Brotherhood of Maintenance Employees Division – IBT (hereinafter referred to as the “Organization”) and the Union Pacific Railroad Company (hereinafter referred to as the “Carrier”). Upon the whole record, a hearing, and all evidence as developed on the property, the Board finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and that the parties were given due notice of the hearing thereon. The Claimant was ably represented by the Organization.

The Carrier prevented the Claimant, Casey Hunt, a Section Truck Driver, from returning to service after he lost consciousness while operating a "hy-rail" vehicle. The Claimant was medically disqualified from his position. The Organization claims that the Carrier had no justification to withhold the Claimant from service since his personal cardiologist found he was fit to return to duty on February 10, 2017. Further, the Organization claims that the Carrier violated Rule 50 of the Agreement when it failed to respond to its request for a medical panel consisting of each party's medical representative and a neutral physician who specializes in the Claimant's diagnosed illness.

The Organization filed its claim on February 16, 2017 stating that the Claimant was improperly prohibited from returning to work and denied the medical review provided by Rule 50. The record indicates that the Carrier denied subsequent appeals by the Organization and rendered its final written decision on April 27, 2017. After a conference held on June 26, 2017, the Carrier's decision to deny the claim remained unchanged. The Organization rejected the Carrier's decision and moved to have the matter adjudicated before this Board.

Relevant Contract Provisions

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 to the neutral doctor for his consideration and he will specify whether or not, in his opinion, there was justification for the original disqualification. The opinion of the neutral doctor will be accepted by both parties in settlement of this particular feature. If it is concluded that the disqualification was improper, the employee will be compensated for actual loss of earnings, if any, resulting from such restrictions or removal from service incident to his disqualification, but not retroactive beyond the date of the request made under Section (a) of this rule.

The Board has carefully considered the record before us and find that there are no procedural errors that nullify the need to review the merits of this dispute. With regard to the merits of the claim, we find that the Organization has not met its burden of proof that the Carrier violated the Agreement when it held the Claimant out of service. The record supports the conclusion that the Carrier had sufficient cause to withhold the Claimant from service for one year as a result of "sudden incapacitation". The Carrier's Medical Comments History and the Claimant's cardiologist's notes both confirm the presence of a medical condition that justified the decision to medically disqualify the Claimant from service.


We do however find that the Organization provided sufficient evidence that a dissenting opinion existed between the Claimant's cardiologist and the Carrier's medical staff, which falls within the meaning of Rule 50. The Claimant's cardiologist provided a hand-written note, dated February 10, 2017, accompanied by findings of his examination to support the conclusion that the Claimant could return to work as a "heavy equipment operator".

In summary, we have reviewed and carefully weighed all the arguments and evidence in the record and have found that it is not necessary to address each facet in these Findings. We find that the Claimant is entitled to have his medical status reviewed by the panel of doctors in accordance with Rule 50. The determination by the panel must find that the Claimant would have been physically capable of returning to his job function without

restrictions at the end of the 12-month “sudden incapacitation” period. Should the panel reach this conclusion, the Claimant shall be made whole in accordance with the claim from the end of the 12-month period unless the panel determines that he became medically qualified at a later date, whereupon the Claimant shall be made whole from the date so specified by the panel. If the panel concludes the Claimant is physically disqualified from his truck driver position the Claimant’s continued employment status with the Carrier shall be governed by the applicable provisions of the Agreement.


AWARD

Claim sustained in part, denied in part.




Michael Capone
Neutral Member

Dated: January 17, 2019



Alyssa K. Borden
Carrier Member

Dated: 01/17/19



Andrew M. Mulford
Labor Member

Dated: 01/17/19