Unions, BNSF Railway spar over employee medical records and information

By Richard Wronski | December 27, 2019

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CHICAGO — Ten unions representing more than 30,000 employees have filed a federal lawsuit against BNSF Railway charging that the railroad's demand for certain medical records is a violation of their rights under the Americans With Disabilities Act.

The suit is in the U.S. District Court for the Northern District of Illinois in Chicago.

The unions contend that since 2012, BNSF has implemented "blanket procedures" which violate the employees rights by "impermissibly requiring employees to self-disclose disabilities which do not impede their work," and by "conducting impermissible medical inquiries without objective evidence prior to inquiring whether the conditions will impair an employee's ability to perform the essential job duties."

Unions also say that their members' rights are violated by BNSF's "requiring employees to provide detailed medical documentation without a business necessity and in a manner that is significantly broader and more intrusive than necessary; and other violations."

The suit says that the Equal Employment Opportunity Commission investigated and issued a "for-cause" determination" against the medical policy.

The unions include: American Train Dispatchers Association; Brotherhood of Locomotive Engineers and Trainmen; Brotherhood of Maintenance of Way Employees, Division of International Brotherhood of Teamsters; Brotherhood of Railroad Signalmen; International Association of Machinists and Aerospace Workers District Lodge 19; International Association of Sheet Metal, Air, Rail and Transportation Workers, Mechanical and Transportation Divisions; International Brotherhood of Electrical Workers, System Council 16; National Conference of Fireman & Oilers District of Local 32BJ, SEIU; and Transportation Communications UNION/IAM.

The suit was filed in Federal court in Illinois because the railroad operates in the state and that

the railroad activity the union members are complaining about happened in the state. BNSF Railway argues that if the suit continues, it should move to Federal courts in Texas.

Specifically, the unions' suit alleges that BNSF medical rule 26.3.1, implemented Jan. 1, 2012, required that employees must be reviewed for “fitness for duty” before returning to work after new diagnoses of certain ailments, including diabetes, fractures, heart disease, strokes, or other medical events, including hospitalization, surgery, absences greater than 30 days, or other events. Employees must file a medical status form, as well as other documents.

But the unions say BNSF also required employees to file a medical status form for non-work related medical conditions, even if their physicians had cleared them for full duty without restrictions.

According to the suit, this form required employees to list all medications regardless of whether the medication was related to the condition on which they were reporting. The form also required employees to authorize their physicians to release to BNSF “any information except family medical history or genetic information that is requested with respect to this medical condition…” The form also requires submission of other tests, notes medications, and other information.

The suit says unions addressed this issue directly with BNSF but got no relief. It then filed charges with the EEOC, but unions claim little has changed.

In a filing, Dr. Michael Jarrard, the chief medical officer and head of BNSF’s medical department , says the purpose of the safety rule was to assist BNSF in fulfilling its obligations to maintain a safe workplace and avoid undue risks to the general public. The rule was entirely created, implemented, administered and ultimately rescinded” in Fort Worth.

A response from the unions is due by Jan. 31, 2020; BNSF has until Feb. 18 to respond. A status hearing has been scheduled for March 13.