

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6302

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES)
) Case No. 16
and)
) Award No. 2
UNION PACIFIC RAILROAD COMPANY)

Martin H. Malin, Chairman & Neutral Member
D. D. Bartholomay, Employee Member
D. A. Ring, Carrier Member

Hearing Date: May 12, 2000

STATEMENT OF CLAIM:

1. The discipline (withheld from service on March 25, 1997 and subsequent dismissal) imposed upon Mr. N. R. Marple in connection with an injury he sustained on May 13, 1997 was arbitrary, capricious and in violation of the Agreement (System File N-494/1082165).
2. As a consequence of the violation referred to in Part (1) above, the Claimant shall 'be. . . immediately reinstated to service, he should be paid for all time withheld from service starting May 16, 1997, continuing until the day he is reinstated, all benefit provisions should be allowed as if he had worked and no mention of his removal should not be made a part of his personal record.'

FINDINGS:

Public Law Board No. 6302, upon the whole record and all the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute herein; and, that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

Claimant was hired and began work on March 25, 1997. On May 16, 1997, Claimant was orally advised by a Carrier official that his application for employment was being disapproved in accordance with Rule 14(a) of the Agreement. Rule 14(a) provides:

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Applications for employment will be rejected within sixty (60) calendar days after seniority date was established or applicant shall be considered accepted. Applications rejected by the Carrier must be declined in writing to the applicant.

By letter dated June 10, 1997, Carrier advised Claimant:

This is to advise that your application for permanent employment as a Extra Gang Laborer with the Union Pacific Railroad is hereby disapproved, effective May 16, 1997.

Please arrange to turn in any company property in your possession to your immediate supervisor. Any money due you will be sent to your home.

Claimant received the letter June 17, 1997.

Thus, Claimant was orally notified that his application for employment was rejected within the sixty day period provided for in Rule 14(a). It also is undisputed that Claimant did not work after May 16, 1997. However, written notification of the rejection of Claimant's employment application was neither sent nor received within the sixty day period.

The Organization contends that Rule 14(a) requires that written rejection of an employee's application must be given within sixty days of the date the employee establishes seniority. In the Organization's view, oral rejection is insufficient. Carrier, however, maintains that oral notification within the sixty day period is sufficient as long as written confirmation follows thereafter.

Rule 14(a) consists of two sentences. The first sentence sets the sixty day limitation for rejection of applications for employment. The second sentence requires that rejected applications be declined in writing. Rule 14(a) does not expressly state that applications must be rejected in writing within sixty days. If it did, the plain language of Rule 14(a) would support the Organization's interpretation. Rule 14(a) also does not expressly state that rejections be confirmed in writing. If it did, its plain language would support Carrier's interpretation. On its face, Rule 14(a) is ambiguous concerning whether oral notification of rejection within the sixty day period is sufficient if written confirmation is given outside the sixty day period.

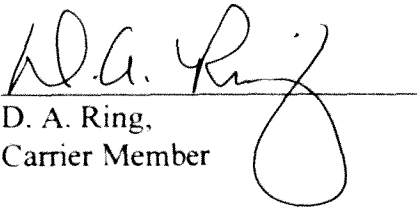
During handling on the property, Carrier stated that it had a past practice of handling rejections of employment applications in this manner because letters of rejection were generated by Carrier's Human Resources Department. The Organization never disputed the existence of such a practice. We find this past practice to be persuasive in resolving the ambiguity in Rule 14(a). Accordingly, we hold that Carrier complies with Rule 14(a) if it orally notifies an employee of rejection of the employee's application within sixty calendar days of the date the employee established seniority, provided that Carrier confirms the rejection in writing within a reasonable time thereafter. Because Carrier complied with Rule 14(a) in the instant case, the claim will be denied.

AWARD

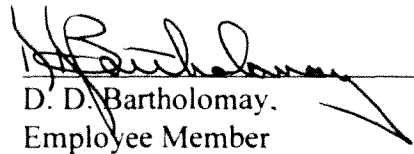
Claim denied.



Martin H. Malin, Chairman



D. A. Ring,
Carrier Member



D. D. Bartholomay,
Employee Member

Dated at Chicago, Illinois. June 12, 2000.