

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD 6986

BNSF RAILWAY COMPANY

(Former St. Louis – San Francisco Railway Co.)

(Carrier)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES DIVISION

(Organization)

PLB No. 6986 Case No. 22
Carrier File No. 12-08-0127
Organization File No. B-3196-1
Claimant: Jarod R. Thompson

STATEMENT OF CLAIM

Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement on July 18, 2008, when Claimant Jarod R. Thompson was dismissed for violation of Maintenance of Way (MOW) Operating Rule 1.6 – Conduct by failing to honestly complete the BNSF Pre-employment Medical Questionnaire.
2. As a consequence of the Carrier's violation referred to in part (1) above, we request that the charges be removed from the Claimant's record, the Claimant be returned to work, and paid for all time lost.

This claim was discussed in conference between the parties.

NATURE OF THE CASE

The Claimant, Jarod R. Thompson, was dismissed for violation of Maintenance of Way Operating Rule 1.6, for allegedly failing honestly to complete the BNSF Pre-Employment Medical Questionnaire. The Claimant contends that he answered several questions in the negative because he did not consider the back pain he experienced after an automobile accident or as an on-the-job injury at his prior employer to be a continuing circumstance that constituted an injury within the scope of the question. Notwithstanding the Organization's assertion that the questions were vague, the questions on which the Carrier's decision to dismiss the Claimant was predicated clearly elicit specific information. In his testimony, the Claimant acknowledged that he understood what was being asked, but felt he need not disclose these prior incidents because the effects of his injuries had ceased.

The Carrier asserted that the Claimant's lack of candor undermined the hiring process, as the Carrier was entitled to make its hiring decisions based on accurate understanding of a candidate's mental and physical capabilities.

The parties were unable to resolve their dispute, and the matter was submitted to this Public Law Board for adjudication.

FINDINGS AND DECISION

Public Law Board No. 6986 (the Board) finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended. Further, the Board has jurisdiction over the parties and the subject matter involved.

The Carrier is entitled to select its employees based on a candid and accurate disclosure of prior medical history, especially given the strenuous physical demands of many of the job classifications in this bargaining unit. Consequently, the Carrier is entitled to require that prospective employees complete and submit a comprehensive recitation of their medical history and physical circumstances, as these factors have a valid, job-related purpose. The questions at issue in the instant case are not so vaguely worded as to permit an employee to determine not to disclose pertinent medical information.

A valid distinction may be drawn between requiring disclosure and unreasonable disqualification from employment because of a long healed condition without permitting further explanation. If the Claimant had answered questions regarding his prior medical record and previous injuries with candor, and thus in the affirmative as he acknowledged in

his testimony he should have, then he would have been and should have been afforded an opportunity to elaborate and to indicate that none of these prior conditions was currently causing him pain or infringing on his ability to perform all aspects of the job for which he was being hired.

It is well settled that falsification on an employment application undermines the basis upon which a prospective employee was offered employment, and permits an employer to rescind the offer of employment within a reasonable time if the employer undertakes reasonable efforts to corroborate the facts provided by the prospective employee on the employment application and other documents submitted at or about the time of hiring. Although the grievant may sincerely have believed that he was being candid and honest when he indicated that he had no current back pain, the questions at issue required that he disclose these prior incidents, especially within the last five years. His failure to do so constituted a misrepresentation of facts sufficient for the Carrier to rescind its offer of employment and to dismiss him from all service.

Therefore, based on the evidence submitted, the Carrier did not violate the Agreement on July 18, 2008 when Claimant Jarod R. Thompson was dismissed for violation of Maintenance of Way Operating

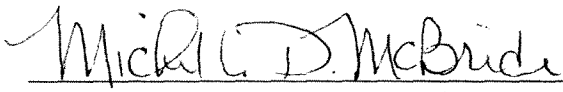
Rule 1.6. by failing honestly to complete the BNSF Pre-Employment Medical Questionnaire. The instant claim is hereby denied. We so find.



Daniel F. Brent, Impartial Chair

Dated: 9-3-09

☒ I concur. ☐ I dissent.



Michelle D. McBride, Carrier Member

Dated: 9/8/09

☐ I concur. ☒ I dissent.



R.C. Sandlin, Organization Member

Dated: 9/11/09