

## **PUBLIC LAW BOARD 5564**

In the Matter of Arbitration between:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES  
DIVISION – IBT RAIL CONFERENCE**

**and**

**NORTHEAST ILLINOIS REGIONAL COMMUTER RAILROAD  
CORPORATION**

Case No. 70

Award No. 70

### **THE ORGANIZATION'S STATEMENT OF THE CLAIM**

This Decision resolves the Organization's claim as follows:

1. The Carrier violated the Agreement when it failed and refused to provide Mr. J. McCrainey a proper hearing prior to his removal from service on July 27, 2016 (System File C 16 08 03/8-19-699 NRC).
2. As a consequence of the violation referred to in Part 1 above, Claimant J. McCrainey shall be exonerated of the charges leveled against him as well as reimbursed for all wage loss associated with the Carrier's actions.

### **STATEMENT OF THE CASE**

Based on the record developed by the Organization and the Carrier, this Public Law Board (Board) finds the Parties herein to be a Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction over the Parties and the dispute.

This dispute is between the Brotherhood of Maintenance of Way Employees Division – IBT Rail Conference (BMWE or Organization) and the Northeast Illinois Regional Commuter Railroad Corporation (Metra or Carrier) (collectively the Parties). The dispute arises out of Metra's July 27, 2016 removal from service of J. McCrainey (Claimant) who was hired on June 1, 2016 as a Trackman/Weedwacker. Trackman/Weedwacker is summer-seasonal temporary employee position pursuant the Parties' side letter.

These temporary employees form a special crew for brush cutting, right-of-way clean up and garbage removal pursuant to the Parties' May 5, 2016 *Side Letter Agreement*, also commonly known as the *Weedwacker Agreement*. Under the *Weedwacker Agreement*, Trackman/Weedwackers employment terminated on August 31, 2018. In addition, the *Weedwacker Agreement* was canceled on August 31, 2016 as well.

There is no dispute over the facts. The Parties' dispute concerns the application of the *Weedwacker Agreement* and Rule 32. *Hearings – Discipline and Unjust Treatment* to the facts.

The undisputed facts are as follows:

On July 27, 2016, J. McCrainey, a Metra Trackman/Weedwacker, was involved in a physical and verbal altercation with another seasonal Trackman/Weedwacker. Both employees were immediately removed from service by the Metra supervisor.

On August 3, 2016, Metra's Director of Electric Engineering notified Claimant in writing that Claimant's application for employment had been rejected. In this regard, Metra maintains that the Claimant was not disciplined or dismissed but only that his application for employment rejected. Metra also asserts that the Claimant was employed from June 1, 2016 to July 25, 2016, only 57 calendar days. For this reason, because Rule 32 applies only to employees with 60 calendar days of service, Metra argues that Claimant is not entitled to a Rule 32 hearing for the mere rejection of his application.

On September 5, 2016, BMW presented this Claim on behalf of the Claimant asserting Metra violated Rule 32. *Hearings – Discipline and Unjust Treatment* by failing to provide Claimant with a Rule 32 hearing. BMW argues that Rule 32 provides for a proper hearing for an employee discipline or discharged who has been in service 60 calendar days. BMW asserts that the Claimant was employed from June 1, 2016 until August 3, 2016, 63 calendar days, when he received written notice that his application for employment had been rejected. BMW requested as remedy that Claimant: immediately be returned to service; be made whole for lost wages; and that Metra withdraw the rejection of his employment application.

On November 2, 2016, Metra denied the Claim asserting that Claimant was hired as a temporary, seasonal Trackman/Weedwacker; was in service for 57 calendar days; and, in any event under any circumstances, his employment expired on August 31, 2016.

On December 21, 2016, BMWWE appealed the denial. BMWWE amended its remedy request to a make whole remedy for lost wages from July 27 to August 31, 2016 and requested that the rejection of Claimant's application be removed from his record.

On February 17, 2017, Metra denied the appeal asserting that BMWWE failed to demonstrate a violation of the Rule 32 and that Claimant was not entitled to a remedy pursuant to the *Weedwacker Agreement* employment August 31, 2016 termination clause.

The Parties conferenced Claim but did not resolve it. This case is now properly before this Board for adjudication.

## DISCUSSION AND FINDINGS

The Board recognizes and accepts the long standing precedent interpreting agreement clauses similar to Rule 32 which establishes that employees in service for the specified time stated in the clause, for example under Rule 32, 60 calendar days, are entitled to a proper hearing when disciplined or discharged.

The *Weedwacker Agreement* expressly extends "all regular work rules" of the Parties to the temporary Trackmen/Weedwackers hired under the agreement. However, some work rules and conditions of employment are excepted and modified by the *Weedwacker Agreement*. The exceptions do not include Rule 32.

Therefore, the Board must determine whether Claimant was removed from service on July 27, 2016, after **57 calendar days** of service, or August 3, 2016, after **63 calendar days** of service.

If the former, then Claimant has no right to a Rule 32 hearing. If the later, then Claim has a right to a Rule 32 hearing.

Simply stated, the undisputed facts establish that Claimant was removed from service by a Metra supervisor on July 27, 2016 after a verbal and physical altercation with another Trackman/Weedwacker.

BMWE argues the effective date of Claimant's removal was August 3, 2016, when Claimant received a letter from Metra's Director of Electrical Engineering stating in pertinent part:

This letter will serve as your official notification that your application for employment with this Company has been disapproved, effective with the date of this letter.

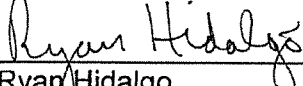
The Board finds that there is no relationship between Claimant's July 27, 2016 on property summary removal from service and Metra's letter officially notifying him that his application for employment was disapproved. It is possible that Claimant's application was disapproved based on his summary removal from service for arguing and fighting on the job. However, this interpretation of the formal notice is speculative. Any relationship between Claimant's July 27, 2016 removal and the August 3, 2016 letter disapproving his employment application is immaterial to the issue of when he was removed from service.

Based on the on property record the Board finds that Claimant was employed for 57 calendar days and has no right to a Rule 32 hearing. This claim must be denied.

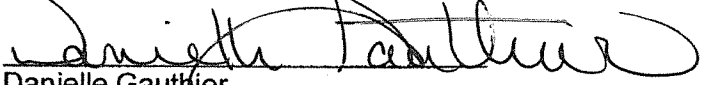
**AWARD**

Claim denied.

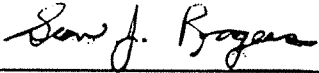
For the Organization:

  
\_\_\_\_\_  
Ryan Hidalgo  
Public Law Board Advocate  
BMW-IBT

For the Carrier:

  
\_\_\_\_\_  
Danielle Gauthier  
Director - Labor Relations  
Metra

Neutral Member:

  
\_\_\_\_\_  
Sean J. Rogers, Esq.  
Sean J. Rogers & Associates, LLC  
Leonardtown, Maryland  
October 31, 2019