

BEFORE PUBLIC LAW BOARD NO. 6043

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
CANADIAN NATIONAL RAILWAY**

Case No. 33

STATEMENT OF CLAIM:

Claim that Trackman T. Murphy, Markham, IL "... should be returned to service with seniority and all other rights unimpaired and be compensated for all wage loss suffered" account Carrier's alleged violation of Rule 33, DISCIPLINE, when Mr. Murphy's seniority was allegedly improperly terminated with Illinois Central Railroad Company on April 6, 2006 when his employment application was rejected.
Organization file number: SC040406.0 CN-IC Murphy, T. (Dismissal Appeal).
Carrier file number IC 134 106 28.

FINDINGS:

The Claimant was hired by the Carrier as a Trackman on the CN/WC in May 2005. The Claimant subsequently requested a position as a Trackman on the CN/IC, and he was informed that he would be required to resign from the WC and that he would establish seniority as a probationary employee on the IC effective on his first day of work there, February 21, 2006. By letter dated March 22, 2006, the Claimant was notified that his application for employment had been disapproved. A second letter, dated April 6, 2006, was sent to the Claimant in order to clarify that his application for employment with the IC had been disapproved. The Organization thereafter filed a claim on behalf of the Claimant, asserting that the Carrier had violated the parties' Agreement, particular Rule 33, Discipline, by improperly terminating the Claimant's seniority. The Carrier denied the claim.

The Organization initially contends that because the Claimant was hired by the Carrier in May 2005, he has an employment relationship with the Carrier. The Claimant never gave up his employment relationship with the Carrier. Accordingly, the Carrier cannot simply reject his application for employment. The Organization argues that the Carrier's actions are in violation of Rule 33(a) of the Agreement, which provides that employees shall not be disciplined or dismissed until after a fair and impartial hearing. The Organization points out that no charges were leveled and no hearing was held, so the Carrier violated Rule 33.

The Organization maintains that the issuance of the Carrier's April 6, 2006, letter was nothing more than a subterfuge to circumvent Rule 33. The Organization argues that the Carrier's attempt to change the format from the CN to the IC is not supported by the record.

The Organization insists that the Claimant was not a "new employee," pointing out that the Claimant's personal number was used on the March 22, 2006, termination letter. Moreover, the Carrier did not require the Claimant to fill out an application for employment form. The Organization asserts that it is evident that the Carrier did not consider the Claimant to be a "new employee," and the Claimant therefore was not subject to a probationary period.

The Organization goes on to emphasize that there is no validity to the Carrier's assertion that Rule 3(f) applies to this matter. The Organization points out that the Carrier did not provide any employment application, so no rejection under Rule 3(f) could be

applied. The Organization argues that the Claimant maintained an employment relationship with the Carrier, even though he went from the WC to the IC. If he had not maintained such a relationship, then the Claimant would have had to submit a new employment application.

The Organization ultimately contends that the instant claim should be sustained in its entirety.

The Carrier initially contends that the Claimant submitted his letter of resignation from the CN/WC effective February 17, 2006, relinquishing all of his rights, including his seniority date of May 5, 2005. The Carrier insists that the Claimant was informed that he would establish seniority on the IC as a probationary employee.

The Carrier points to Rule 3(f) of the Agreement, which provides that applications for employment will be rejected within ninety days after the seniority date is established. The Carrier maintains that the Claimant was dismissed on March 22, 2006, as a probationary employee and in accordance with the guidelines of Rule 3(f).

The Carrier argues that whether or not it required the Claimant to fill out an "employment application" is irrelevant to this matter. The Carrier further asserts that the Organization erroneously uses the term "CN" to refer to the railroad that the Claimant either worked at or applied to work at. The Carrier points out that the Claimant began his career with the WC in May 2005, and he resigned his position with the WC in February 2006. The Claimant then applied for employment with the IC as a new employee.

The Carrier maintains that the Claimant was established as a probationary

employee on his first day of work, February 21, 2006. On March 22, 2006, the Claimant's application for employment with IC was rejected in accordance with Rule 3(f) of the Agreement. The Carrier also contends that contrary to the Organization's assertion that Rule 3(f) does not apply, Rule 3(f) does not make any reference to an "employment application."

The Carrier goes on to emphasize that the assignment of personal identification numbers has nothing to do with employment status or seniority. The Carrier maintains that these are more like social security numbers that stay with the individual regardless of employment status, even remaining constant after an individual severs employment. The Carrier points out that in the event that an individual is rehired, the same personal identification number is maintained.

The Carrier insists that it has not violated the Agreement, and the instant claim should be denied in its entirety.

The parties being unable to resolve their dispute, this matter came before this Board.

This Board has reviewed the record in this case, and we find that the Organization has not met its burden of proof that the Claimant must be returned to service with seniority and other rights unimpaired because he was allegedly improperly terminated by the Illinois Central Railroad Company. Therefore, the claim must be denied.

The record reveals that the Claimant had previously worked for the Wisconsin Central Railroad; and on February 17, 2006, he resigned his position there. The record

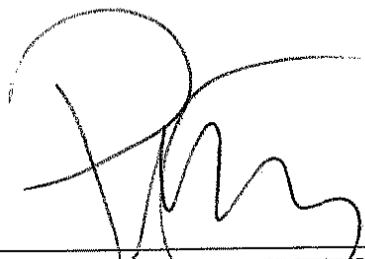
further reveals that he applied to work for the Illinois Central Railroad and his Application for Employment was disapproved effective March 22, 2006. There was apparently some confusion with his application, and the Carrier subsequently made him whole for lost time from March 22, 2006, until April 6, 2006. However, it is clear from the record that the Claimant had resigned his employment with the Wisconsin Central Railroad and had applied for employment with the Illinois Central Railroad and that application had been disapproved or rejected.

This Board rejects the Organization's position that the two employers, the Wisconsin Central and the Illinois Central, were the same entity because they are both part of the Canadian National Railway. This Board also rejects the fact that since the Claimant was not required to fill out an Application for Employment that he was not a new employee.

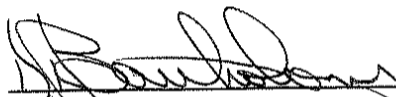
The employer has the right to terminate an employee while he or she is still on his or her probationary status. In this case, the Carrier exercised its right to terminate the Claimant's seniority after it rejected his Application for Employment. Therefore the claim must be denied.

AWARD:


The claim is denied.



PETER R. MEYERS
Neutral Member



ORGANIZATION MEMBER
DATED: 7-13-07



CARRIER MEMBER
DATED: July 13, 2007