

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 7357
AWARD NO. 21, (Case No. 21)

BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYES DIVISION – IBT RAIL CONFERENCE

vs

CP RAIL SYSTEM/DELAWARE AND HUDSON
RAILWAY COMPANY, INC.

William R. Miller, Chairman and Neutral Member
Kevin D. Evanski, Employee Member
Anthony G. Stillittano, Carrier Member

Hearing Date: July 15, 2015

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement when it failed to notify Claimant N. Phillips, in Writing, that his application was being denied (Carrier's File 8-00877).
2. As a consequence of the violation referred to in Part 1 above, we request that Claimant Phillips be compensated for all of his losses as a result of this violation."

FINDINGS:

Public Law Board No. 7357, 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.

The undisputed facts indicate that the Claimant entered the service of the Carrier on April 17, 2012. On May 24, 2012, the Claimant was verbally informed that his application was being rejected.

Pertinent to the instant dispute hereto is Rule 2, which in relevant part states:

"Application for employment will be rejected within ninety (90) calendar days After seniority date is established, or application shall be considered accepted. Applications rejected by the Carrier must be declined in writing to the applicant."

It is the position of the Organization that Rule 2 of the Agreement requires that if an employee's application is rejected within the ninety (90) days such notification must be "in writing". It concluded that the Carrier violated the Agreement and it requested that the claim be sustained as presented.

It is the Carrier's position that it verbally notified the Claimant and the Organization on May 24, 2012, Claimant's application was being rejected and such rejection was effective on that date. The Carrier argued that there is no required time frame in which it must issue a written declination of application. The Carrier further asserted that the Organization did not meet its burden of proof that the Carrier violated the Agreement and it closed by asking that the claim remain denied.

The Board notes that the Carrier notified the Claimant in writing that his application was rejected on June 13, 2012, and that was within the ninety (90) day window for rejection of an application provided in Rule 2.

Review of the Carrier's June 13, 2012, written notification to Claimant in relevant part reads:

"Dear Mr. Phillips,

This is to notify you that effective immediately, June 13, 2012 your application with the Delaware and Hudson/Canadian Pacific Railway System has been disapproved." (*Underlining Board's emphasis*)

The instant claim alleged a violation of Rule 2 because the Claimant was removed from service without being notified in writing of the Carrier's decision. (A second claim was filed disputing the Carrier's decision to reject the Claimant's application for employment. That claim is expressly NOT the subject of this Case No. 21.) Accordingly, this dispute concerns only the Carrier's obligation in connection with written notification of its decision to reject an employee's application for employment.

After a careful review of the record it is determined that the Carrier's formal letter notifying the Claimant that his application was being disapproved identifies June 13, 2012, as the effective date of the disapproval. Regardless of what may have been exchanged verbally prior to the Carrier's June 13, 2012 letter, the Carrier's formal written notification provided the effective date of the application rejection as being June 13, 2012. In light of the aforementioned document, the Carrier has not satisfactorily established a reason for the Claimant being withheld from service from May 24, 2012 through June 12, 2012. Based upon the particular written evidence in this record and the unique facts of this case, the Board finds and holds that the Carrier is required to compensate the Claimant from the date he was initially held out of service until the effective date of the Carrier's written declination of his application.

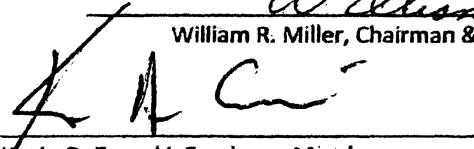
(May 24, 2012 through June 12, 2012) – for a total of 90 hours at the straight time rate of pay. The Board emphasizes that it makes no finding on the Carrier's decision to reject the Claimant's application within the ninety (90) day period provided within Rule 2 and it further notes that this case has no bearing on the Claimant's dismissal.

AWARD

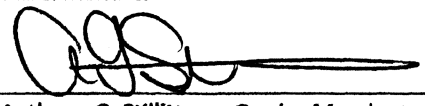
Claim sustained in accordance with the Findings and the Carrier is directed to make the Award effective on or before 30 days following the date the Award was signed by the parties.



William R. Miller, Chairman & Neutral Member



Kevin D. Evanski, Employee Member



Anthony G. Stillittano, Carrier Member

Award Date: 8-3-15