

SPECIAL BOARD OF ADJUSTMENT NO. 1048

AWARD NO. 206

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

AND

NORFOLK SOUTHERN RAILWAY COMPANY

Statement of Claim: "Claim of the System Committee of the Brotherhood that:

1. The Carrier's discipline (dismissed from all service with Norfolk Southern Railway) of Mr. D. Cayton issued by letter dated June 25, 2012 in connection with his alleged conduct unbecoming an employee in that he omitted and/or falsified information on his employment application when on his March 8, 2011 MED-15 Form he did not indicate that he had ever had 'back injury/pain' and affirmatively stated that he did not ever have such a condition at any time prior to his employment application but subsequently submitted medical information to the Carrier's Medical Department confirming that he had a history of episodic back pain over the past three (3) years and a compressed disc in his back for years was arbitrary, capricious, unreasonable, and in violation of the Agreement (Carrier's File MW-ROAN-12-24-BB-192).
2. As a consequence of the violation referred to in Part 1 above, Mr. Cayton shall receive the remedy prescribed under Rule 30(d) of the Agreement."

Upon the whole record and all the evidence, after hearing, the Board finds the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended, and this board is duly constituted by agreement under Public Law 89-456 and has jurisdiction of the parties and subject matter.

This award is based on the facts and circumstances of this particular case and shall not serve as precedent in any other case.

AWARD

After thoroughly reviewing and considering the record and the parties' presentations, the Board finds that the claim should be disposed of as follows:

The Claimant entered service for the Carrier on April 11, 2011 as a 3rd Rate Carpenter in the Bridge and Building sub-department. At the time of the events leading to this case, the Claimant was on a medical hold in the return to work process after being on approved medical leave. The Carrier utilizes a form, MED-15, as part of its routine pre-

employment procedures. The MED-15 form requires all potential employees to provide their medical background and history, including any current medical conditions. Specific to this case, the form requires potential employees to indicate if they have ever experienced or are currently experiencing any “back injury/pain.” The Claimant completed his MED-15 form of March 8, 2011 and checked “no” in response to this question. The Claimant began a medical leave of absence on March 12, 2012 and upon his return to work provided medical records to the Carrier documenting his condition – a routine part of the Carrier’s return to work process. The paperwork provided to the Carrier indicated that the Claimant had told his treating physician that he had recurring back pain over the three previous years – going back to a time period before he began service with the Carrier. In addition, as part of a health questionnaire filled out for his treating physician, the Claimant reported a compressed disc which he had “for years.” The Carrier’s Medical Department determined that, had it been aware of these conditions at the time of the Claimant’s employment application, it would have medically disqualified him from employment.

Due to these findings, the Carrier charged the Claimant with conduct unbecoming an employee due to his omission of medical history on the MED-15 form. A formal investigation was conducted including a hearing on June 12, 2012. The Carrier concluded that the Claimant was guilty of the charges and dismissed him from service via letter on June 25, 2012.

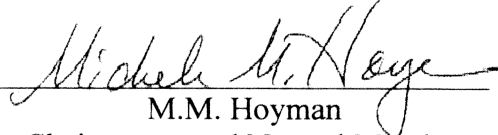
The Carrier’s argument in this case is that the Claimant clearly failed to disclose crucial medical information. The Carrier finds the Claimant’s defense – that the notation regarding back pain in the Claimant’s medical records was a simple error – to be without merit. It notes that there is no evidence for the Claimant’s assertion that getting the error corrected via a written clarification would cost \$150 (the reason for the Claimant’s statement as to why he declined to get a clarification). It also notes that even if the notation about having episodic back pain for 3 years is wrong, the Claimant still disclosed he had a compressed disc “for years” – information that comes directly from a questionnaire the Claimant filled out himself. The Claimant argued at the hearing that all this information was an “overstatement” (see Transcript, pages 12-13) – which if true the Carrier notes would then be dishonest. Finally, the Carrier argues that dismissal was appropriate in this case because (1) providing false employment information is “blatant dishonesty” and (2) the Claimant had a limited record of service.

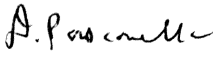
The Organization argues that since the charges here involved dishonesty, a form of moral turpitude, the Carrier has a heightened burden of proof. It believes the Carrier has failed to sustain this heightened burden of proof. The Organization argues that at no time did the Claimant disclose a previous medical history, as all information was provided third party via his physicians. The Organization also notes that the Claimant was cleared by three physicians for immediate return to work after his medical leave. The Organization also questions the Carrier’s assertion that – assuming the allegations are true and the Claimant did not fully disclose his medical information – his back problems would be enough to medically disqualify him from service. If the Claimant’s medical history had been of such a level that it would have medically disqualified him from initial

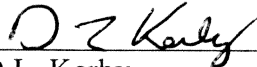
employment, then it seems impossible that three physicians could all concur that he was ready to return to work later.

The Board does not find the Claimant's explanation for events in this case to be credible. If the Claimant's medical history documentation stating that he had years of back problems were simply mistakes, it seems highly unlikely that the Claimant's physician would refuse to amend the documents to correct the mistakes unless she was paid \$150. The omission in this case is not minor – the Claimant appears to have an extensive history of back problems and the Carrier should be able to take that information into account before making a hiring decision. There is no dispute in the case record that, had the Carrier been aware of the Claimant's condition at the time, he would not have been medically qualified for employment. Given these factors, and given that the Claimant's record of service is relatively short in this case, we find dismissal was appropriate.

The claim is denied.


M.M. Hoyman
Chairperson and Neutral Member


D. Pascarella
Employee Member


D.L. Kerby
Carrier Member

Issued at Chapel Hill, North Carolina on June 20, 2013.