

No. 25-1028

**IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

Rodney Phath,

Plaintiff-Appellant,

v.

Central Transport North America, Inc.,

Defendant-Appellee.

On Appeal from a Final Judgment of the
United States District Court for the Eastern District of Pennsylvania
Case No. 2:24-cv-00681, Judge John R. Padova

**REPLY BRIEF FOR PLAINTIFF-APPELLANT
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Table of Contents

Table of Authorities.....	ii
Argument.....	1
I. Section 9125 prohibited Central Transport from rejecting Phath’s job application based on his prior conviction without first determining that the conviction is job-related.	1
II. Central Transport’s understanding of Section 9125(b), like the district court’s, would render that section meaningless.....	5
Conclusion	6

Table of Authorities

Cases	Page(s)
<i>B & G Constr. Co. v. Dir., Off. of Workers’ Comp. Programs</i> , 662 F.3d 233 (3d Cir. 2011)	5
<i>Guzzo v. Allen Distrib.</i> , 479 F. Supp. 3d 91 (M.D. Pa. 2020)	2, 4
<i>In re Borough of Downingtown</i> , 161 A.3d 844 (Pa. 2017)	5
<i>RadLAX Gateway Hotel, LLC v. Amalgamated Bank</i> , 566 U.S. 639 (2012)	4
Statutes	
18 Pa. Cons. Stat. § 9102	2, 3, 4
18 Pa. Cons. Stat. § 9104	3
18 Pa. Cons. Stat. § 9104(a)	3
18 Pa. Cons. Stat. § 9104(a)(1)	3-4
18 Pa. Cons. Stat. § 9104(e)	3
18 Pa. Cons. Stat. § 9125(a)	1, 2
Other Authorities	
Oxford Eng. Dictionary (“part”), https://www.oed.com/dictionary/part_n1?tab	2
Oxford Eng. Dictionary (“receipt”), https://www.oed.com/dictionary/receipt_n?tl=true	1

Argument

I. Section 9125 prohibited Central Transport from rejecting Phath’s job application based on his prior conviction without first determining that the conviction is job-related.

Central Transport makes just one argument: that CHRIA Section 9125(b) applies only when an employer is “in receipt [of a job applicant’s] ‘criminal history record information file’” at the time it “makes its decision not to hire” the applicant. Central Transport Br. 13. That argument is wrong because it excises critical words from Section 9125.

A reminder: Section 9125(b) is triggered “[w]henver an employer is *in receipt of information which is part of* an employment applicant’s criminal history record information file.” 18 Pa. Cons. Stat. § 9125(a) (emphasis added). Thus, so long as the employer has received criminal-conviction information contained in a job applicant’s criminal history record, the protections of Sections 9125(b) and (c) apply.

Our opening brief (at 10-14) reached this conclusion through a review of all of Section 9125’s words, revealing both what those words mean and what they do not mean. To start, an employer must be “in receipt” of criminal history information, with “receipt” meaning simply “the action of receiving something.” Opening Br. 11 (quoting Oxford Eng. Dictionary (“receipt”), https://www.oed.com/dictionary/receipt_n?tl=true). The statute does not, as Central Transport would have it, demand that the employer receive the information from any particular source, a point

underscored by the provision's passive construction ("in receipt of"). *See* Opening Br. 11-12; *Guzzo v. Allen Distrib.*, 479 F. Supp. 3d 91, 94 (M.D. Pa. 2020). Next, "part of," as used in Section 9125, refers to any constituent component or portion of a person's criminal history record information. Opening Br. 12 (quoting Oxford Eng. Dictionary ("part"), https://www.oed.com/dictionary/part_n1?tab). And, finally, CHRIA's definition of "criminal history record information" includes a criminal conviction. Opening Br. 13 (citing 18 Pa. Cons. Stat. § 9102). All told, then, Phath's criminal conviction is "criminal history information" that Central Transport was "in receipt of" as soon as it learned of Phath's conviction. *See* Opening Br. 13. So, the protections of Sections 9125(b) and (c) apply.

Central Transport takes three tacks in response. *First*, and most tellingly, it just ignores our word-by-word, section-by-section textual analysis of Section 9125, failing even to cite the only decision that conducts that analysis. *See Guzzo*, 479 F. Supp. 3d at 95. That is, the company nowhere confronts what the statute actually says.

Second, for reasons the company never explains, Central Transport appears to put great stock in Section 9125(a)'s reference to an employment applicant's criminal history record information "file," *see* 18 Pa. Cons. Stat. § 9125(a), suggesting perhaps that unless the prospective employer has received an official "file" of some sort, Section 9125(b) is never triggered. Central Transport Br. 6, 13 (bolding and italicizing the

word “file”); *see also id.* at 9, 11. But the statute’s use of “file” gets Central Transport nowhere for the reasons already explained. Section 9125(b) is triggered when the employer is in receipt of information that is “a part of” the applicant’s criminal history information “file,” and Central Transport has never disputed, nor could it, that a criminal conviction is a part of that file. *See* 18 Pa. Cons. Stat. § 9102; Opening Br. 13.

Third, Central Transport accuses Phath of “ignor[ing]” 18 Pa. Cons. Stat. § 9104, which excludes certain materials obtained from particular public-agency sources from the definition of criminal record history information. Central Transport Br. 14; *see also id.* at 9, 12. Revealingly, though, Central Transport never argues that Section 9104 applies to the criminal-conviction information disclosed to it by Phath in this case.

In any event, we did not ignore Section 9104. *See* Opening Br. 17-18. Quite the contrary, we explained that Section 9104 generally excludes from CHRIA’s coverage particular information “collect[ed]” from certain “sources,” including, for instance, from police blotters and press releases describing alleged criminal activity. 18 Pa. Cons. Stat. § 9104(a), (e). So, Section 9104 couldn’t apply here because Central Transport did not “collect[]” information about Phath’s criminal history from any source mentioned in Section 9104, *see* 18 Pa. Cons. Stat. § 9104(e); rather, the information came to Central Transport from Phath himself. *See* Opening Br. 18. Moreover, that information is not excluded under Section 9104 unless it is “disseminated contemporaneous with the incident.” 18 Pa.

Cons. Stat. § 9104(a)(1). The information here was disseminated when Phath offered it to Central Transport, not contemporaneously with Phath's crime, which happened years earlier. Finally, and most importantly, as explained above, a criminal conviction indisputably is included in CHRIA's definition of "criminal history record information," so it cannot be excluded under Section 9104. *Id.* § 9102; *see Guzzo*, 479 F. Supp. 3d at 95.

That brings us to our last point. Even if we assume (counterfactually) that some tension exists between Sections 9125(b) and 9104, the former would prevail. *See* Opening Br. 12-13. After all, Section 9104 is a *general* provision stating when CHRIA applies or not, apparently the Legislature's effort to clarify when certain already-public information may be further disseminated. Section 9125, on the other hand, homes in on a quite *narrow*, though important, concern: an employer's use of criminal record information in one realm only—hiring decisions. Section 9125(b) focuses even more narrowly on the use of *convictions* in hiring decisions. Thus, the canon of statutory construction that a specific statutory provision trumps a more general provision when the two conflict applies here, where the Legislature "has enacted a comprehensive scheme and has deliberately targeted specific problems with specific solutions." *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012) (citation omitted) (explaining that the specific-over-the-general canon seeks both to avoid conflicts between

statutory provisions and to prevent rendering the specific provision meaningless); *see also, e.g., B & G Constr. Co. v. Dir., Off. of Workers' Comp. Programs*, 662 F.3d 233, 258-59 (3d Cir. 2011); *In re Borough of Downingtown*, 161 A.3d 844, 871 (Pa. 2017).

For these reasons and those provided in our opening brief, Central Transport's reliance on Phath's criminal history record information was barred by Section 9125(b), and its failure to give written notice of its use of that information violated Section 9125(c). This Court should reverse.¹

II. Central Transport's understanding of Section 9125(b), like the district court's, would render that section meaningless.

Our opening brief explains (at 20-21) that the district court's ruling would allow any employer to evade Section 9125(b) simply by asking job applicants whether they have been convicted of a crime. Central Transport does not disagree. It says only that "this imagined factual scenario is simply not before the Court." Central Transport Br. 15.

But Central Transport's "imagined factual scenario" is effectively this case. Central Transport Br. 13. Recall that, during the interview process, Central Transport told Phath that it was ordering a criminal background

¹ Central Transport does not deny that if Phath pleaded a violation of Section 9125(b), he also pleaded a violation of Section 9125(c)'s notice provision. *See* Opening Br. 14.

check on him. Appx5 (¶ 12). Phath apparently (and sensibly) viewed this statement as a request for disclosure of his criminal conviction, which he provided immediately, Appx5 (¶ 13).

In any event, if the district court's decision is allowed to stand, what Central Transport now claims is left to the imagination would quickly become reality in all cases. Under the district court's reasoning, an employer may invariably escape Section 9125(b)'s prohibition. *See* Opening Br. 20. The employer just has to ask job-seeking former offenders to disclose their criminal records. If they say their records are spotless, they may be denied employment lawfully because they are lying to their prospective employer; if they tell the truth, they may be denied employment with impunity because they have a criminal record—and because, according to the district court, Section 9125(b) doesn't apply. Section 9125(b)—which seeks to give former offenders a fair shot at employment—would be rendered meaningless. That cannot be right.

Conclusion

This Court should reverse the district court's grant of Central Transport's motion to dismiss and remand for further proceedings.

Respectfully submitted,

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