

**Award No. 1934
Docket No. 1792
2-CRRNJ-EW-'55**

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Mortimer Stone when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 72, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (ELECTRICAL WORKERS)**

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement Electrical Worker Helper Alexander Raymond was unjustly dismissed from the service on June 25th, 1954.

2. That accordingly the Carrier be ordered to reinstate this employe in the service with his seniority unimpaired and with compensation for all time lost retroactive to the aforesaid date.

EMPLOYEES' STATEMENT OF FACTS: Alexander Raymond, hereinafter referred to as the claimant, was employed as an electrician on February 16, 1945 by The Central Railroad Company of New Jersey, hereinafter called the carrier. The claimant continued in the service as an electrician until his occupation was changed to that of an electrician helper on February 7, 1949 at Communipaw Engine Terminal, New Jersey, whereat he remained in that service more than five years, or for a total of over nine years.

The carrier made the election to summon the claimant, on June 15, 1954, to submit to a question and answer hearing and a copy of the transcript of such hearing is submitted herewith and identified as Exhibit A.

The carrier then elected to dismiss the claimant from its service on June 25, 1954 and which is affirmed by the copy of "EMPLOYEE'S SERVICE RECORD REPORT," submitted herewith and identified as Exhibit B.

This dispute has been handled with the appropriate officers of the carrier, including up to and with the "highest designated Railroad official," with the result that he has declined to adjust it.

The agreement of October 1, 1947, as subsequently amended, is controlling.

POSITION OF EMPLOYEES: It is submitted there is no dispute between the parties that the provisions of Rule 43, contained in the current agreement, were in force and effect at the time the carrier employed the claimant on

teen (13) years later his previous employment was discovered and he was dismissed. This Board held 'Claim denied.'"

Third Division

AWARD 5994—"Claimant stated in his application for employment that he had not been charged with any crime. Eight (8) years later he was dismissed because this answer was found to be false. In denying this claim the Board held in part:

'This case is not a matter of discipline * * *. The question is was the information materially false, if so, then the Carrier had the right to dismiss the man.'"

AWARD 4328—"While the award does not state the nature of the false statement made by claimant, the Board denied his claim for reinstatement."

First Division

AWARD 12107—"While the award does not state the nature of the false statement made by claimant, the Board held in part 'The falsification of such an essential part of an application for employment must be deemed to vitiate not only the application itself but also the relationship which the application sought to create' and denied the claim."

AWARD 12159—"Claimant stated in his application that he had never been convicted of a crime, 136 days later this was found to be false. The Board denied claim for reinstatement."

AWARD 15570—"Claimant stated in his application that he had never been convicted of a crime, six (6) years later this was found to be false. The Board denied claim for reinstatement citing Awards 12107 and 12159."

AWARD 16239—"Claimant falsified his age by using the record of another man, fourteen (14) years later he was found out and dismissed. The Board denied claim for reinstatement."

If this carrier had known of these two serious injuries that claimant had suffered before February 16, 1945, the date of hiring, it would no doubt have had an important effect on carrier's decision as to whether or not he should be hired. There is no doubt but that claimant knew of this nor is there any doubt but that he remembered these injuries. The later one occurred January 15, 1945, only a month before, as a result of which he was taken to the hospital, X-Rays were taken and compensation was awarded.

Carrier contends that claimant made a false statement on a very material matter in his application for employment and under the terms of this employment the action taken of dismissal was proper. The claim should therefore be denied in its entirety.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

In claimant's application for employment he stated that he had never been injured. Some nine years afterward, in connection with a suit he had brought against carrier for injuries allegedly received while in its employ, claimant admitted in a deposition that he had twice been injured and received compensation therefor in prior employment.

Upon formal investigation of the charge of falsification of his employment application he admitted the injuries and compensation therefor and the false answer in his application and said "it was false but the reason I made the statement was because I was in good physical condition and did not believe it necessary to talk about my former injuries." Thereupon he was dismissed from his employment.

Carrier has the right and duty to use care in its selection of employes, to protect the public, its other employes and itself. In order so to do it may make inquiry as to any pertinent record of the applicant. It must be concerned with his physical, moral and mental fitness for the work. The provisions of Rule 43 as to examination and statement which may be required of applicants are not a prohibition of other pertinent inquiry and investigation by carrier in its selection of employes.

A record of several recoveries for injury in previous employment may have other implications than that of physical disability and is a proper subject of inquiry and investigation. Such investigation as to prior injuries cannot be made in the absence of knowledge of them. To deny carrier the right to discharge on learning of false denial of prior injuries is to deny it the right to investigate the true record of an applicant, and that right is not waived by lapse of time in the absence of knowledge of the false answer.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of May, 1955.