

Award No. 5156
Docket No. 4888
2-LI-CM-'67

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 156, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)

THE LONG ISLAND RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement, Charles Rotter was unjustly dealt with when on March 29, 1965 Master Mechanic H. J. Kallmann handed down a dismissal notice.

2. That accordingly the Carrier be ordered to:

- (a) Restore Mr. Rotter to service with seniority rights unimpaired, compensate Mr. Rotter for all lost time, and make Mr. Rotter whole for all vacation rights.
- (b) Pay the premiums (or hospital association dues) for hospital, surgical and medical benefits for all time held out of service and pay the premiums for Mr. Rotter's Life Insurance for all time Mr. Rotter was held out of service.

EMPLOYEES' STATEMENT OF FACTS: The employe named in Part 1 of the employes' claim hereinafter referred to as the claimant was employed by the Long Island Railroad Company, hereinafter referred to as the carrier, in the craft of carmen.

The claimant was dismissed from service starting March 29, 1965 without proper reason. On March 12, 1965 the carrier charged the claimant with falsification of employment application. The trial was held on March 17, 1965.

The claimant was dismissed from service on March 29, 1965. Claim was filed as shown by copy of general chairman appeal letter. Chief mechanical officer Jack Brannan denied the claim. The claim was then appealed to Mr. H. J. Bellis, Director of Personnel, and after conference on May 13, 1965, declined the claim.

In conclusion, we desire to reiterate that the claimant knowingly falsified the employment application and the only recourse available to the carrier was to apply the discipline rule and, in doing so, dismissed him from service.

This division has held in many awards, among them Award No. 1548, Referee Wenke, that the Board would not substitute its judgment for that of the carrier in disciplinary cases:

"There was evidence adduced at the hearing which supports the company's finding of guilt and, in view thereof, the company was not capricious, arbitrary or unjust in making its decision."

(Exhibits not reproduced.)

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

Parties to said dispute waived right of appearance at hearing thereon.

The Claimant on Oct. 28, 1963 in his application for employment stated that he had never been arrested.

On investigation held on Feb. 6, 1965 it was discovered that Claimant had been arrested and convicted four (4) times for moral turpitude.

The Claimant was suspended and dismissed from service by the Carrier.

No rules were violated by the Carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **SECOND DIVISION**

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 28th day of April, 1967.

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