



Award Number 5959

Docket Number 5862

2-PCT (NYC)—MA—'70

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Nicholas H. Zumas when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO 103, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO
(Machinists)**

PENN CENTRAL TRANSPORTATION COMPANY (NYC)

DISPUTE: CLAIM OF EMPLOYEES:

1. That the management at the Collinwood Diesel Terminal violated the working agreement when they arbitrarily and unjustly dismissed Mr. W. F. Zimmerman from service.
2. That Mr. W. F. Zimmerman be restored to service with his seniority unimpaired.
3. That he shall be compensated for all loss of wages and benefits as a result thereof until he is restored to service.

EMPLOYEES STATEMENT OF FACTS: Mr. W. F. Zimmerman hereafter referred to as the claimant was employed as a Machinist on June 16, 1967 by The Penn Central Company at its Collinwood Diesel Engine Terminal Shop, Cleveland, Ohio. Prior to his being employed, he was requested by the Carrier to fill out an employment application, which he did.

On February 16, 1968, while working his regular tour of duty, fell and injured his back. He was out of work until April 8, 1968 when he reported for work. Before returning to work, the claimant was requested by the Carrier to be examined by the Company Doctor, W. F. Sorer. This he did and Dr. Sorer qualified him to return to work, which the claimant did.

On April 27, 1968, as the Claimant could not satisfactorily adjust damages for his injury, with the Company Claim Agent, had his attorney, Mr. E. Morrison, present to the Carrier a claim for damages account his on-duty injury to his back.

On May 6, 1968, the Claimant, on advise from his Doctor, Willis L. Irwin, M.D. requested of the Carrier, a sick leave. As the Claimant in performing his regular duties at work constantly aggravated his injury and so it was not healing properly, such sick leave was granted by the Carrier and the Claimant went on sick leave.

On July 3, 1968, the Claimant feeling better again, reported for work.

difference between what he earned and what he could have earned had he not been dismissed.

In summary, the Carrier asserts that it has advanced clear and conclusive evidence to support the Claimant's guilt of the offense with which charged and that Carrier's action in disciplining the Claimant was taken only after a fair and impartial investigation had established such guilt. The Carrier's action was in no way arbitrary, malicious or in bad faith and the measure of discipline assessed was commensurate with the offense committed.

Therefore, in view of all of the foregoing, the Board is respectfully requested to deny the Employees' appeal and claim in this matter.

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.

Parties to said dispute were given due notice of hearing thereon.

Claimant was charged with falsifying his application of employment in several respects including schooling, prior employment, and the nature and reason for his release from military service. After hearing and investigation, Claimant was dismissed from Carrier's service.

We may disregard the allegations relating to the schooling and prior employment, not only because their proof was vague and subject to misinterpretation and mistake but more importantly, they were irrelevant and not crucial to the issue.

As a general proposition, Carrier is entitled from prospective applicants for employment, through an application for employment, to be put on notice of any fact or factor which would a) be grounds for rejecting the applicant or b) cause Carrier to investigate further before employing the applicant.

In his application Claimant indicated that he had received an "Honorable" discharge from the military service on the grounds that he was an "only son." At the hearing it developed that Claimant had in fact received a "General Discharge Under Honorable Conditions" and by Claimant's own admission, the reasons therefore were "unsuitability, unfit for military service" and "refusal to train."

To the unsophisticated, failures to distinguish and discern the differences between an "Honorable Discharge" and a "General Discharge Under Honorable Conditions" is understandable, and would provide no basis for a dismissal.

To state, however, that the reason for discharge was "only son",¹ and to fail knowingly to state that the reason for discharge was unsuitability, is of sufficient gravity to warrant dismissal. This is particularly so when the "unsuitability" was based on "Character and Behavioral Disorders." Carrier's responsibility for the health and safety of all of its employees is paramount, and as such is entitled to full disclosure from prospective employees of any fact which might jeopardize that health and safety.

A W A R D

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 25th day of June, 1970.

1. Claimant testified that efforts were made through his Congressman to be released on the grounds of his being an only son, and assumed that this was one of the reasons for his discharge. The record does not disclose whether the Congressional efforts were successful.