

The Second Division consisted of the regular members and in addition Referee Irving T. Bergman when award was rendered.

Parties to Dispute: (System Federation No. 16, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Norfolk and Western Railway Company

Dispute: Claim of Employees:

1. That under the Rules of the Current Agreement Apprentice Car Repairer W. T. Taylor was unjustly dismissed from the service of the Norfolk and Western Railway Company by written notice dated March 1, 1971.
2. That accordingly the Norfolk and Western Railway Company be ordered to restore W. T. Taylor to service with all service rights, seniority, contractual "fringe" benefits, and pay for all time lost from February 23, 1971.

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 waived right of appearance at hearing thereon.

Claimant filed an application for employment in 1967. Question 19 of the application stated: "Have you ever been convicted of a crime?" Claimant answered, "No, except traffic violations." Following this question on the application is a statement in the same size type as the question, as follows: "I fully and definitely understand that any false statement or misrepresentation herein will justify my dismissal from the service without an investigation, regardless of when such fact may be discovered by the Company." Rule 42 of the Agreement headed APPLICANTS FOR EMPLOYMENT states that applications shall be approved or disapproved within 60 days after applicant begins work, "—except in event of applicant giving false information, approval may be revoked at any time." In 1971, the Carrier learned for the first time that the claimant had been convicted of a crime previous to filling out his application.

The Carrier contended that on technical grounds the claim should be dismissed because the remedy sought on the property is different from the remedy requested in the claim before this Board. The Carrier also argued on the merits that Rule 42, read together with the statement following question 19, on the application is self executing and requires no investigation. Despite this a hearing was held at which the claimant testified that the answer to question 19, was false.

The Organization contended that the change in the claim was not serious enough to justify a dismissal; also that the passage of time before learning of the false answer overcame the effect of the false statement. The claimant testified that he did not reveal the criminal conviction because the judge, now dead, had said that as a juvenile, the record was closed.

Third Division Award No. 17222 submitted by Petitioner favors the avoidance of "super technical" positions so that disputes may be resolved on the merits. It also indicates that the technical objection may be one of degree and not necessarily prejudicial. In this case, the result on the merits is self evident and we prefer to resolve the dispute on that basis rather than to become bogged down with considering the effect of the change as argued by the Carrier.

As stated in prior Awards, an applicant owes the Carrier the right to know the truth. A truthful statement in this case as testified by claimant may not after investigation have been detrimental to him. In addition, after being employed, claimant should have known about Rule 42.

On the basis of the Record, the statement in the application and Rule 42, claimant has no meritorious defense to overcome an admitted false statement that completely misled the Carrier, Second Division Awards No's. 5959, 6391, 6013, 6381 and Awards cited therein. In several of these cases a longer period of time elapsed than in this case before the Carrier learned the truth and dismissed the employe who gave false information.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 30th day of July, 1974.