

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. 21, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
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(Southern Railway Company

Dispute: Claim of Employees:

1. That under the current Agreement Carman Student Mechanic A. G. King, East St. Louis, Illinois was unjustly dismissed from service February 27, 1975.
2. That accordingly the Carrier be ordered to return Student Mechanic A. G. King to service with all rights unimpaired and that beginning February 27, 1975 he be paid for all time lost.

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 were given due notice of hearing thereon.

Claimant was charged with falsifying his application for employment and his pre-employment Medical Examination Form. After investigation and hearing, Claimant was dismissed from Carrier's service.

On his Employment Application dated April 8, 1974 Claimant described his general health as "Outstanding", stated that he had lost no days due to sickness in the past five years, and denied having any "physical deformities or disabilities." On his pre-employment Medical Examination Form dated July 11, 1974 and signed by Claimant, indicated that he was not suffering from any of the conditions listed including dysentery, bowel trouble, or stomach trouble. Claimant's answer to the question of whether he was drawing disability benefits was "no".

A letter dated January 14, 1975 was sent to Carrier's Master Mechanic from an insurance company advising that it had been paying disability benefits to Claimant under a disability policy, and wanted to confirm the nature of Claimant's employment since medical records indicated that he was in Carrier's employ. Further investigation by the Master Mechanic revealed that Claimant applied for disability benefits on May 18, 1974 and payments were begun after a 30 day waiting period. The basis for the payments was "Inflammatory Bowel Disease", "Intractable Diarrhea" and "Colitis".

In the meantime, Claimant was admitted to the Veterans Hospital from January 14, to 27, 1975. He reported for work with a statement signed by a hospital doctor stating that Claimant "is presently being treated at the John Cochran Hospital for Gramulomatous colitis and should be able to return to work on Monday, January 27, 1975."

After receiving Claimant's consent Carrier received Veterans Hospital records showing that Claimant had been hospitalized on three separate occasions: May 20 to June 4, 1974; October 24 to 26, 1974; and January 14 to 24, 1975.

The "history" taken by the doctor on Claimant's first admission is significant:

"This is the first JG VAH admission for this 25 year old Black male who entered with a one year history of intractable diarrhea. The patient was in apparent good health until May 1972 when he began having watery diarrhea of 10 stools per day, not nocturnal. A month later he noted the onset of severe cramping abdominal pain with the onset of tenesmus and diarrhea, relieved with defecation. The patient was begun on Librium, Prednisone and Lomotil with dramatic relief of symptoms for several weeks but the pain and diarrhea returned and became refractory to the therapy. Currently over the past several months he has had 10 stools per day less watery but still not formed. He also complained of associated weakness and denied any melena or hematochezia but has occasional specs of blood in the stool. He had a 44 pound weight loss over the past year with good appetite but patient does not eat secondary to having abdominal pain and tenesmus and diarrhea after eating."

From the above the Board cannot help but conclude that Claimant knowingly falsified his application for employment and his pre-employment Medical Examination Form, and that such false statements were material.

As was stated in Second Division Award No. 5959:

"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."

With respect to the Organization's contention that Claimant did not receive a fair and impartial hearing, the Board finds such contention to be without merit. The fact that the Master Mechanic investigated the matter, was the hearing officer, and rendered the initial decision to discipline is not, in and of itself, tantamount to an unfair hearing that mandates either a remand for a new hearing or a sustaining award. Patent pre-judgment and prejudice must also be clear. After carefully reviewing the record, particularly the hearing transcript, the Board finds that Claimant's due process rights were not violated.

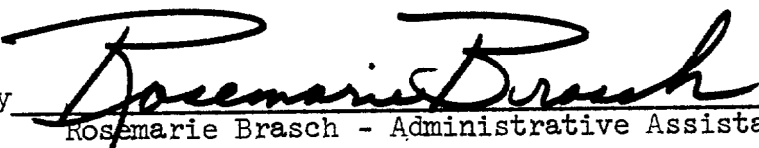
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 6th day of January, 1978.

