

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

Parties to Dispute: (System Federation No. 105, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Blacksmiths)
(
(Union Pacific Railroad Company

Dispute: Claim of Employees:

- (1) That the Union Pacific Railroad Company dealt unjust and unfair with Blacksmith Helper, Kevin P. Hollander, when it dismissed him from service at the close of shift January 11, 1977. That accordingly, the Union Pacific Railroad Company be ordered to make Blacksmith Helper Kevin P. Hollander whole by;
- (2) Restoring Kevin P. Hollander to his former position, with seniority rights, vacation rights, sick leave benefits and all other benefits that are a condition of employment, unimpaired and compensation for all time lost, plus six per cent (6%) annual interest. Further, that the Union Pacific Railroad Company reimburse Kevin P. Hollander for all losses sustained on account of loss of coverage under Health and Welfare Agreements during the interim he is improperly held out of service.

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 pivotal question raised in this dispute is whether or not claimant's failure to answer honestly a question on Carrier's employment application justifies the penalty of dismissal.

Claimant was specifically charged on December 31, 1976 with falsifying his employment application when he failed to identify a recent back injury sustained while working for the Pepsi Cola Company, in violation of Rule 700, Form 7908 Union Pacific Railroad, Rules Governing Duties and Deportment of Employees, Safety Instructions and Use of Radio effective October 1, 1974.

Rule 700 reads:

"Employees will not be retained in the service who are careless of the safety of themselves, or others, insubordinate, dishonest, immoral, quarrelsome or otherwise vicious or who do not conduct themselves in such a manner that the railroad will not be subjected to criticism and loss of good will or who do not meet their personal obligations."

An investigative hearing was held on January 4, 1977, wherein Claimant was found guilty of the charge and dismissed from service effective January 11, 1977. This determination was immediately appealed.

In reviewing this case, it is important to emphasize at the outset, the significance of an employment application. This data gathering instrument is not intended to collect routine biographical information, but instead purposely designed to gather vital personal information that is used in the selection, placement and development of employees.

If an applicant fails to apprise his prospective employer of critical background incidents such as convictions or past medical conditions, the potentiality for work place problems and litigation increases to the detriment of Carrier, the employee and the public interest.

The record shows that claimant had consulted a chiropractor on August 18, 1976 for a low back injury that occurred on August 2, 1976, when he worked for the Pepsi Cola Company.

The chiropractor acknowledged in a letter to the Shop Superintendent, dated November 17, 1976, that he had treated Claimant for this back problem, but certified to the best of his knowledge that Claimant had recovered.

On its face, Claimant's failure to note this condition on the employment application might appear to be a negligible factor, since he was apparently capable of performing his duties as a Blacksmith Helper. But a significant principle is involved in this dispute that pervades the intrinsic nature of the employment relationship. In Second Division Award No. 4482, we stated, "We believe that the record establishes the fact that Claimant falsified his employment application. We also believe the Claimant's falsification was of a material nature and went to the heart of the Carrier's employment contract. Consequently, we must hold that the Carrier's act was proper and that the Claimant was not unjustly dismissed."

We believe this holding applies to the fact specifics herein.

Carrier should not be expected to suffer from omissions of this sort if they could eventually affect its operations and well being. It is vested with a public interest responsibility that must be protected from records falsification.

Form 1
Page 3

Award No. 7873
Docket No. 7763
2-UP-BK-'79

We will deny the claim.

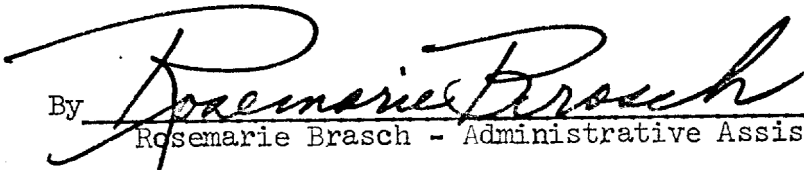
A W A R D

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 28th day of March, 1979.