

The Second Division consisted of the regular members and in addition Referee Edward M. Hogan when award was rendered.

Parties to Dispute: (International Association of Machinists and
(Aerospace Workers
(Consolidated Rail Corporation

Dispute: Claim of Employees:

1. That the Consolidated Rail Corporation be ordered to restore Machinist W. E. Brown to service and compensate him for all pay lost up to time of restoration to service at the prevailing Machinist rate of pay.
2. That Machinist W. E. Brown be compensated for all insurance benefits, vacation benefits, holiday benefits, and any other benefits that may have accrued and were lost during this period, in accordance with Rule 7-A-1 (e) of the prevailing Agreement which was effective May 1, 1979.

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 employees 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 was dismissed from the service of the Carrier following a formal investigation on the charges of substituting someone other than himself to take a re-employment physical for the Claimant prior to his being reinstated to the service of the Carrier. The Claimant had originally been employed by the Carrier on November 24, 1973. On December 5, 1979, Claimant had been dismissed from service of the Carrier on other charges. In April of 1980, the Carrier reinstated the Claimant to its service at the behest of the Organization's request for leniency with respect to Claimant's dismissal. The only proviso that the Carrier attached to its reinstatement was that the Claimant successfully complete a return to work physical examination. On October 28, 1980, an individual, purportedly and professing to be the Claimant, took the return to duty physical. Claimant then took the approved medical form issued subsequent to the physical being given to someone other than the Claimant, to the diesel locomotive shop. Prior to the Claimant commencing his first scheduled day of work, it was determined by the Carrier that the person who took the physical was not the Claimant. The Carrier immediately withheld the Claimant from service, and notified him that he was to appear at a formal investigation on the charges of fraudulent and dishonest conduct. The investigation was twice postponed at the Organization's request, and, finally, was held on June 12, 1980, at which time the Claimant did not attend. However, he was represented by two (2) representatives of the Organization. Following the formal investigation,

Claimant was notified that he had been dismissed in all capacities from the service of the Carrier.

The Claimant contends that there is insufficient credible evidence to prove the charges made by the Carrier. We disagree, and hold that the record indicates that the Carrier, through a fair and impartial hearing, adduced sufficient credible evidence on which to support the charges. This Board has consistently held, on numerous occasions, that we will not upset the findings in a disciplinary case which are based on substantial and credible evidence, absent arbitrary, caprice and/or abusive discretionary behavior on the part of the Carrier (see First Division Awards, 13142 and 14552, Second Division Awards, 2269 and 3960, and Third Division Awards, 11795 and 11894, among many others).

Claimant also contends that he did not receive a fair and impartial hearing due to the fact the Carrier refused to grant a third continuance of the formal investigation. Two prior postponements had been granted, and the third request for postponement was made after the commencement of the investigation. We find that the Claimant and the Organization had more than sufficient time to prepare a defense, and that Claimant's failure to attend the proceedings were done so at his own peril (see Second Division Awards, 1334, 5987, 5988 and 6499).

Claimant further contends that he was wrongfully taken out of service due to the fact that he had never actually performed any service after having been granted the opportunity to return to service on a leniency basis following a previous dismissal. We find no merit to this contention, and further find that the Carrier acted reasonably in this case.

The Organization also contends that the wording of the charge implied a preconceived impression of the Claimant's guilt. We cannot agree with this contention, as we feel that the charge sufficiently describes the conduct of which Claimant was to face at the formal investigation. The requirement for a fair and impartial hearing pre-supposes that the Claimant has sufficient notice of the complete and accurate charges he will be facing. A clear and concise charge of alleged behavior is an integral element of a fair and impartial hearing. We find that the Carrier has met its burden.

This Board has held in many awards that lying and dishonesty on a pre-employment application is an extremely serious offense for which the penalty of dismissal will be found to be quite reasonable. In Third Division Award No. 22369 (Referee George S. Roukis), a similar situation existed:

"The record clearly shows that Claimant committed a very serious offense. It was a willful manifestation which created an employment relationship predicated upon fraud and deceit. The law has invariably held such transactions to be revocable. Accordingly, we are compelled under the particular facts and circumstances herein to deny the claim."

We find similar facts to exist here, and wish to strongly reaffirm that preemployment application falsehoods and dishonesty or concealing of a physical condition on the application for employment is a serious and grievous offense for which dismissal will be upheld.

Form 1
Page 3

Award No. 9328
Docket No. 9504
2-CR-MA-'82

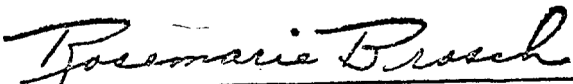
Examining the Claimant's prior employment record, and considering that he was being restored to service following an earlier dismissal on the basis of a request for leniency, we uphold the dismissal as meted in this case as fully reasonable.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 15th day of December, 1982.