

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

Parties to Dispute: (International Brotherhood of Firemen & Oilers
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(Louisville and Nashville Railroad Company

Dispute: Claim of Employees:

1. That under the current and controlling agreement, as amended, Service Attendant R. E. Minehart, I.D. No. 394014, was unjustly dismissed from the service of the Louisville and Nashville Railroad Company on April 3, 1981, after a formal investigation was held on March 9, 1981.
2. That accordingly Service Attendant R. E. Minehart be restored to his regular assignment at L&N Corbin Shops, Corbin, Kentucky, compensated for all lost time, vacation, health and welfare, hospital, life insurance and dental insurance premiums be paid effective April 3, 1981, and the payment of 6% interest rate be added thereto.

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 was dismissed from the service of the Carrier on April 3, 1981 following a formal investigation which was conducted on March 9, 1981 on the charges of falsification of his employment application insofar as Claimant failed to indicate that he had any "back problem". The Organization claims that the Claimant failed to receive a fair and impartial hearing, that the Carrier has failed to meet its burden of proof, that the penalty of dismissal was arbitrary, capricious and an abuse of managerial discretion, and that the formal investigation which is before this Board upon review was instituted after the Claimant had filed legal action against the Carrier for a work-related accident. The Carrier argues that the formal investigation was fair and impartial, that substantial credible evidence exists on the record to fully substantiate the charges against the Claimant, and that the assessment of dismissal was warranted by the evidence adduced and record of the formal investigation.

At the formal investigation, the Claimant admitted that he answered "no" on the application for employment question which stated: "Have you ever had any of the following: back trouble (as one of the boxes to check yes or no)?" The Carrier also introduced at the formal investigation a Medical Report submitted by Dr. Prewitt which indicated that he had treated the Claimant for back trouble in April of 1977. Claimant also admitted that this was true.

This has been an extremely difficult case for this Board to decide. The Claimant indicates at the formal investigation that he did not consider his treatment for "back trouble" in April of 1977 to be significant. This may be so, but after our thorough review of the record, we believe that it is incumbent upon the claimant or any potential employe of a Carrier to be truthful with the Carrier concerning his/her physical condition at the time of employment. Nor are we convinced of Claimant's contention that the interval of time between the false statement and its discovery by the Carrier is such that it would preclude the action taken by the Carrier in the instant case. (See Second Division Awards 6381, 1934, and 4359; also, Third Division Awards 5994 and 10090.)

In citing numerous Awards of this Board, this Board stated in Third Division Award No. 18103:

"The Board has consistently held that an employee who falsifies his employment application, irrespective of the elapsed time between the date of the application and the date when falsification was discovered, is subject to discharge."

In addition to the consistent policy of this Board, holding that falsification or dishonesty in any form is a dismissible offense, this Board has long held that absent arbitrary, capricious or discriminatory conduct or an abuse of managerial discretion, we will not disturb the findings and assessment of discipline as determined by the formal investigation. In Second Division Award 1323, this Board stated:

"It has become axiomatic that it is not the function of the National Railroad Adjustment Board to substitute its judgment for that of the Carrier's in disciplinary matters, unless the Carrier's action be so arbitrary, capricious or fraught with bad faith as to amount to an abuse of discretion. Such a case for intervention is not presently before us; the record is adequate to support the penalty assessed."

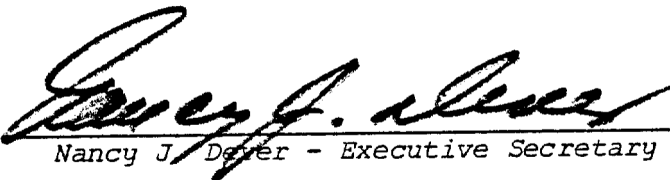
We are of the same opinion as we are unable to find in our review of the record evidence which would support intervention or disturbance of the findings and assessment of discipline. While there can be no doubt that dismissal is the most severe penalty to be paid by any employe, we are bound by precedent of this Board that dishonesty in any form is a dismissible offense.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 13th day of June, 1984