

**Award No. 4448**

**Docket No. 4424**

**2-AT&SF-MA-'64**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee J. Harvey Daly when award was rendered.

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 97, RAILWAY EMPLOYES'  
DEPARTMENT, A. F. of L.—C. I. O. (Machinists)**

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY  
COMPANY — Coast Lines —**

**DISPUTE: CLAIM OF EMPLOYES:**

1. That under the current controlling agreement Machinist Earle T. Martin of San Bernardino, California, was unjustly dismissed from the service of the AT&SF Railway Company by written notice dated January 25, 1962.
2. That accordingly the carrier be ordered to reinstate this employe to service with all service rights, seniority, contractual "fringe" benefits, and pay for all time lost from carrier service, retroactive to January 25, 1962.

**EMPLOYES' STATEMENT OF FACTS:** Machinist Earl Thomas Martin, hereinafter referred to as the claimant, was first employed by the Atchison, Topeka and Santa Fe Railway Company, hereinafter called the carrier, as machinist at San Bernardino on May 17, 1951, was furloughed in reduction of force September 13, 1951, was re-employed as machinist by the carrier at San Bernardino on December 7, 1956, and continued to retain service connection as such until he was discharged following formal investigation conducted by the carrier on January 8, 1962.

Last compensated service performed by claimant for the carrier was on August 5, 1961, following which he had been off-duty on approved leave of absence account disability identified by his attending physicians as occupational contact dermatitis.

In September, 1961, the firm of Magana and Olney, attorneys at law, Los Angeles 48, California, acting in behalf of claimant, filed a law suit against the carrier for damages account alleged on-duty injury.

The carrier elected to summon claimant to stand formal investigation at 10:00 A. M. on January 8, 1962 ostensibly for the purpose of determining facts concerning alleged falsification of employment application Form 1692 Standard

“If the final decision shall be that an employe has been unjustly suspended or dismissed from the service, such employe shall be reinstated with seniority rights unimpaired, and compensated for the net wage loss, if any, resulting from said suspension or dismissal.” (Emphasis added).

Attention in this connection is also directed to Second Division Awards 2811, 2653 and 1638, Third Division Awards 6074 and 6362, and Fourth Division Award 637.

**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 were given due notice of hearing thereon.

Machinist Earle Thomas Martin, the claimant, was first employed by the Carrier from May 17, 1951 to September 13, 1951. He was reemployed as a Machinist on December 7, 1956, at the Carrier's facility at San Bernardino, California, and he continued in service until discharged on January 25, 1962, following a formal investigation.

During the claimant's latter term of service with the Carrier, he was granted several leaves of absence due to “occupational contact dermatitis”. In fact, at the time of his discharge the claimant had been on a leave of absence since August 5, 1961, because of dermatitis.

In September 1961, the claimant filed a personal injury lawsuit against the Carrier in the amount of \$85,000 for an alleged on-duty injury.

On November 6, 1961, the claimant mentioned his prior service with the Southern Pacific Railroad to Mr. L. L. Luthey, Carrier's Superintendent of Shops. The employment application the claimant filed with the Carrier on December 3, 1956, did not show that the claimant had been employed by the Southern Pacific Railroad from December 20, 1943 to February 11, 1944, as a student brakeman and as a probationary brakeman.

A Carrier initiated inquiry confirmed the claimant's Southern Pacific service. Consequently, a formal investigation was conducted by the Carrier's Mr. Luthey on January 8, 1962, to determine whether or not the claimant had falsified his employment application. The claimant was found guilty and the Carrier terminated his services on January 25, 1962.

The Organization contends that the claimant had been removed from Carrier's service without proper cause or justification.

The Carrier, on the other hand, contends that the claimant was guilty of falsification of Application Form 1692 Standard and that he was properly dismissed from service in keeping with the language of Rule 40, Memorandum No. 1, paragraph (a) which reads as follows:

“If after applicant is employed, investigation develops that he is undesirable or has falsified application, he may be relieved from service by invoking the provisions of Rule 33½.”

On the Carrier's Employment Application appear the following two items:

Item 13. "List all your railroad service in detail as follows:"

Item 30. "Do you fully understand and agree that any false statement or misrepresentation herein of a material nature will justify and cause your dismissal from the service regardless of when such fact may have been discovered by the company or any of its agents?"

Claimant's Answer: "Yes."

Pertinent portions of the transcript of the formal investigation read as follows:

Mr. Luthey — question: "What was the reason you left the S.P.?"

Mr. Martin — answer: "To join the Navy. My service Operating Department was unsatisfactory as a brakeman."

Mr. Luthey — question: "Although you failed to show service with the S. P. in filling out Item 13, do you still claim you did not falsify this question?"

Mr. Martin — "I didn't falsify the question intentionally. I was advised not to enter that service because it was of such a short period and it had no bearing on this craft here."

The record reveals that the claimant falsified his employment application. Whether or not there were extenuating circumstances can never be determined, because Mr. Jerry Cushing, the clerk, who the claimant alleges told him that if prior employment did not exceed six months not to list it on his (claimant's) employment application, died in 1957.

But if the claimant so carefully followed Mr. Cushing's advice by not listing his Southern Pacific service because it was of less than six months' duration — why did the claimant proceed to list his prior Santa Fe service, which also was of less than six months' duration?

We believe that the record establishes the fact that the 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.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of SECOND DIVISION

ATTEST. Harry J. Sassaman  
Executive Secretary

Dated at Chicago, Illinois, this 26th day of February 1964.