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Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6381
Docket No. 6233
2-SCL-FO-'72

The Second Division consisted of the regular members and in addition Referee Irving T. Bergman when award was rendered.

Parties to Dispute: (System Federation No. 42, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Firemen & Oilers)
(
(Seaboard Coast Line Railroad Company

Dispute: Claim of Employees:

1. That under the current and controlling agreement, as amended, laborer William Lawson was unjustly dismissed from service at Baldwin, Florida on October 22, 1970, after a summary investigation on October 9, 1970.
2. That accordingly, laborer William Lawson be restored to service with his seniority rights, vacation, health and welfare, life insurance rights, in addition to pay 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 waived right of appearance at hearing thereon.

Claimant was dismissed for falsifying his employment record. He was later offered reinstatement, "with seniority unimpaired and without loss of any vacation rights." There was to be no back pay for time lost but claimant would have the right to continue his case with this Board. The offer was acceptable to the Organization but claimant insisted on back pay and did not answer Carrier's letter offering reinstatement, within the time provided therein, Carrier's Submission p. 9, 10.

The issues raised by the Organization were late dismissal for falsifying employment application after eight months' service; retaliation against claimant for going over the head of his supervisors to complain about his work conditions and pay; the supervisor who also conducted the investigation was prejudiced; claimant was not permitted the services of an attorney at the investigation.

Claimant was entitled to be represented only as provided in the Agreement. This does not include the attorney. Claimant was represented by his local chairman.

The supervisor who conducted the investigation may have been resentful. The record of the investigation indicates that he did bear down hard in his questioning. However, he was thorough and we should not confuse detailed persistent questions with prejudice. Moreover, claimant admitted the false answers in the employment application. The most important was failing to reveal that he had previously worked for the same Carrier in another state and was let go after one and one half months' service. In general, claimant was careless with the truth and showed something less than desirable integrity when he admitted that he had deliberately failed the intelligence test given by Selective Service in order to be classified IV-F. At the conclusion of the investigation hearing, both claimant and his representative stated that they were satisfied with the manner in which the investigation had been conducted. After claimant admitted false, misleading and inaccurate answers to questions on the employment application, his representative could do no more than plead for leniency.

If retaliation was behind the investigation, the possibility of such a finding was eliminated by the fact that the claimant admitted the false answers and provided the ground for dismissal under Rule 12 of the SCL Mechanical Department Rules. This finding is not intended to imply that retaliation was evident. Retaliation is a state of mind that we cannot see into. It must be demonstrated in some concrete form before such accusation can be found to be so.

Many Awards provide precedent for dismissal after the sixty day period provided in Rule 31(c) of the Agreement, when false answers in the employment application are exposed at a later date. Second Division Award No. 1934 denied a claim when the false answer was disclosed nine years after employment. That Award refers to Third Division Award No. 5994 when dismissal followed knowledge of a false answer eight years after it was made. That Award also refers to Second Division Award No. 718 where as in this case, claimant stated in his employment application that he had not been previously employed by the same carrier. Thirteen years later his previous employment was discovered and the Board upheld dismissal. The same conclusion as to length of time is found in Second Division Award No. 4359, Finding #2, when dismissal occurred nine years after an untruthful answer in application form.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: _____

E. A. Killian
Executive Secretary

Dated at Chicago, Illinois, this 28th day of September, 1972.