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Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6530
Docket No. 6326
2-LI-EW-'73

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

Parties to Dispute: (System Federation No. 156, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Electrical Workers)
(
(Long Island Railroad Company

Dispute: Claim of Employees:

1. That the Long Island Railroad, in violation of the current Agreement, improperly denied Electrician Helper Power Operator F. X. Blake the right to perform service for the Long Island Rail Road.
2. That, accordingly, the Long Island Rail Road be ordered to reinstate Electrician Helper Power Operator F. X. Blake with all benefits, vacation and seniority rights unimpaired and with compensation for all time lost as a result of said action.

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 at hearing thereon.

In order to maintain a standard of rendering Awards which are succinct and to the point, this Board has meticulously avoided editorializing in its Opinions. Nevertheless, it must be stated that this case is a distressing one. We are mindful of the fact that persons suffering from a handicap, especially one not readily ascertainable by observation, who are anxious to be useful members of society and seek to earn a livelihood for themselves, are fearful that notice thereof to a prospective employer might result in a rejection. We, therefore, cannot fault the Petitioner for its vigorous processing of this claim.

However, Petitioner chose to disregard certain basic factors and concepts which have evolved as guidelines for determination of this type of dispute.

The management of mass public transportation facilities are under constant, massive pressure to take every conceivable step to endeavor to assure safe operations. In addition, organized labor has pressed for extensive legislation for safe working conditions so as to minimize and substantially reduce on the job injuries sustained by employees. It is therefore essential that Carriers be fully informed of all possible impediments which an applicant for employment may have which might effect his ability to perform his assigned duties. They must be afforded maximum ability to protect the public, their employees, and the property of others as well as their own from detriment.

Claimant herein was well aware of his chronic condition and the nature of the attacks which can occur at any time, without notice. His employment application states that he is a high school graduate and it is therefore unlikely that he did not comprehend the medical questions posed therein. One specific question clearly referred to some of the aspects of the recurring seizures he has, from time to time, suffered over the years. His negative answer thereto misled Carrier's medical examiner and did not alert him to check into this physical problem, undiscernible in the routine examination, in order that recommendations concerning the type of work claimant could perform without exposure of himself and others to injury and damage could be made. He accepted assignment to a position which Petitioner concedes has dangerous propensities. It must be held that the record herein contains substantial evidence to support the finding of the Carrier's officers that Claimant falsified his application for employment with reference to a material matter. (See First Division Award 16785 and Second Division Award 6368.)

In innumerable Awards of this Board, it has been ruled that disciplinary action against an employee for such conduct is proper and warranted. (Second Division Awards 6391, 5988, 5959, 5156, 4448, 4359, 3618 and many others of this and other Divisions.) Further, it is well established that this Board will not permit its sympathies, affinities or concerns to override the decision of the Carrier as to the appropriate penalty to be assessed upon being satisfied with the proof of infractions or violations by the charged employee. Awards 6198, 6196, 5703, 4195, 4098, 4000, 3894, 3874. The concept is best summarized in Award 6198 (Quinn) as follows:

"This Board does not presume to substitute its judgment for that of a Carrier and reverse or modify Carrier's disciplinary decision unless the Carrier is shown to have acted in an unreasonable, arbitrary, capricious, or discriminatory manner, amounting to an abuse of discretion ..."

Nothing in the record herein affords a basis for interference with

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the action taken by the Carrier against the Claimant.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:

E. A. Killen

Executive Secretary

Dated at Chicago, Illinois, this 20th day of June, 1973.