

The Second Division consisted of the regular members and in addition Referee James F. Searce when award was rendered.

Parties to Dispute: (System Federation No. 106, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(
(The Washington Terminal Company

Dispute: Claim of Employee:

1. That the Washington Terminal Company violated the controlling agreement when they refused to restore car cleaner Carlos W. King to compensated service in compliance with Award # 7281. Carrier claimed that King was suspended pending hearing on a charge in this case. Then was subsequently dismissed on June 6, 1977.
2. That accordingly the Washington Terminal Company be ordered to restore Claimant C. W. King to service of the Company with seniority and vacation rights unimpaired and compensated for his net wage loss.

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.

The facts in this case overlap with the events of a Board action (Award 7281) on an earlier removal of the Claimant for reasons not germane here: In 1977, the Carrier was apparently ordered to return the grievant to service; in the process of doing so, the Carrier required production, by the Claimant, of his police record, if any. The Claimant had been hired some two years prior, at which time he had responded in the negative to a question:

"have you ever been convicted of a criminal offense other than a minor traffic violation?" (The application form carried a warning that rejection of employment or dismissal from service could occur if false information is provided; the statement was immediately above the job candidate's signature line.) At the time of his hire in 1975, the Claimant was to have produced such a police record, if any, but the Washington, D. C., Police Department was not honoring such request for information (due to lack of ability to be responsive).

In 1977, the Claimant secured a copy of such record and presented it to the Carrier which showed the following:

Date of Arrest	Charge(s)	Disposition
12-02-72	Disorderly Conduct	E. F. \$10.00
4-16-73	Disorderly Conduct	E. F. \$10.00
9-05-73	Robb. Snatch	I.S.S. 4-17-74

Essentially, the dispositions indicated that the Claimant forfeited bonds (paid and failed to contest) for the Disorderly Conduct charges; the robbery charge ("Robb. Snatch") was shown to have been disposed of by imposition of a sentence which was suspended ("I.S.S."). Post the Claimant's removal, it was demonstrated that the charge for robbery was actually dismissed and that the Police Department's records were in error. (The Organization points out that a warning of such potential error was written into the Police form from which such data was extracted in the first place.)

The Organization contends that the Claimant had no reason to believe he had falsified his application, in that he merely forfeited bond for the disorderly conduct -- which it contends are hardly criminal, and that the more serious charge was an error on the Police's part.

At the outset, we must separate the circumstances in this case from those covered under Award 7281. The record would indicate that the grievant was being processed to return to work in compliance with that Order. It is well established that an employer is not estopped from a review of an employee's past records by the passage of time, unless the parties have mutually agreed to some artificial time limit. There is apparently no question as to the validity of the "Disorderly Conduct" charge; the question here is: Did the Claimant have reason to believe such incidences represented either "minor traffic violations" or something less serious? We look to the Claimant's own comments at the hearing for guidance in that regard (questions by the Hearing Officer, answers by the Claimant):

"Q. Mr. King, my review of this request indicates you were arrested three (3) times. 12/2/72 - Disorderly Conduct -- E.F. - \$10.00, which means elected to forfeit \$10.00 for own convenience. 4/16/73 - Disorderly Conduct - E.F. - \$10.00 - means elected to forfeit \$10.00 for own convenience. 9/5/73 - Robb Snatch - I.S.S. 4/17/74. Robb Snatch is a felony. I.S.S. means imposition of sentence suspended. This is a conviction of which you were charged, found guilty, sentenced but sentence was suspended. Mr. King, is this criminal record correct?

A. No, it is not correct. I didn't do ne'er day. I did not commit that charge.

Q. Which charge?

A. I didn't commit that robbery charge. As far as the others, I ain't going to take but so much mouth off anybody in the street. I'm going to defend myself. I paid the ten dollars out of my pocket because I didn't want to deal with no court on those but I didn't commit that robbery charge. I'm going to get a letter from my lawyer showing I didn't do ne'er day for that charge or any of them. In fact I was waiting on my lawyer to call me this morning before I came here." (Excerpt from the transcript of hearing held 5/27/77 at pp 5-6)

We are hardly moved to conclude that the Claimant considered such events as minor traffic violations. A long series of Awards have supported the Carrier's right to execute the clearly stated warning of removal in the case of falsification of an application. The Claimant's erroneous statement on the application does not diminish by time' his error extends ab initio -- from the time it is committed until detected.

We find no basis to disturb the Carrier's action in this case.

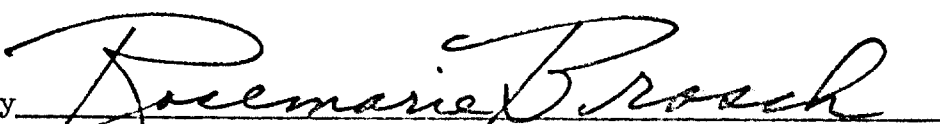
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 17th day of October, 1979.