

The Second Division consisted of the regular members and in addition Referee Kay McMurray when award was rendered.

Parties to Dispute: { System Federation No. 7, Railway Employees'
 { Department, A. F. of L. - C. I. O.
 { (Firemen & Oilers)
 { Camas Prairie Railroad Company

Dispute: Claim of Employees:

1. Under the current controlling Agreement, Mr. Steve R. Pearsall, Laborer, Lewiston, Idaho, was unjustly dealt with when dismissed from service of the Camas Prairie Railroad Company, effective February 16, 1978.
2. That, accordingly, the Camas Prairie Railroad Company be ordered to reinstate Mr. Steve R. Pearsall to service with seniority rights unimpaired, compensate for all time lost including fringe benefits, and remove the entry of censure from his personal file.

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 claimant, S. R. Pearsall, was employed as a laborer at the Carrier's facility in East Lewiston, Idaho.

On January 19, 1978, he was advised by mail to attend an investigation on Tuesday, January 24. The notice read in pertinent part:

"... for the purpose of ascertaining the facts and determining your responsibility in connection with your filing late accident report January 14, 1978, claiming injury occurred January 7, 1978, alleging on duty injury at East Lewiston while boarding locomotive BN 186 at 8:00 P.M. January 7, 1978, also alleged falsification of employment application."

The investigation was postponed at the request of the claimant and held on February 7, 1978. The hearing resulted in the penalty herein complained of.

With respect to the first charge, the Carrier relies upon Rule 2 of the Burlington Northern Safety Book.

Rule 2: "An employee having any knowledge or information concerning an accident or injury before his tour of duty ends (or as soon thereafter as possible) must complete Report of Personal Injury, in triplicate, supplying the information required. All copies are to be sent to the Superintendent."

The exposure of the Carrier to liability suits in cases of personal injury is well understood and the Employer has a right to expect that all employees will adhere to the rule.

In the case at bar, the report of the incident which prompted the charges was received seven days after occurrence. The organization seeks to justify the time lapse by pointing out that forms were not available at the office at the time of the incident. The record does contain reference to a question regarding the forms, but no one attempted to find them. During the period of time between the incident and report, the claimant was mobile and conducted normal activities other than the work assignment.

In connection with the second allegation, the Carrier introduced a copy of the claimant's application for employment wherein he signed a statement that he understood that he was subject to dismissal at any time if the information contained in the application was incorrect. In that application there were two questions:

1. Have you ever had a serious illness, or any injury, or operation?
2. Were you ever injured in the course of previous employment?

Both of these questions were answered in the negative: The claimant testified that at the time of employment he was concerned about a back injury received in the Air Force, so he asked the doctor who gave him the pre-employment physical about the problem. The doctor responded that since the Air Force had told him there wasn't anything wrong, he shouldn't worry about it. That statement does not alleviate the claimant's responsibility to answer the questions in a truthful manner. Since the injury in dispute was located in the back, the medical history becomes important. However, well-intentioned the claimant might have been in connection with the charges, this Board is constrained by the facts. From the foregoing and the entire record, it is clear that the preponderance of evidence upholds the Carrier's position. They were within their contractual rights in assessing the penalty.

A W A R D

Claim denied.

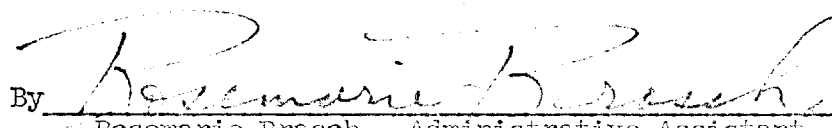
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Award No. 8261
Docket No. 8157
2-CP-FO-'80

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 5th day of March, 1980.