

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. 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 Employees:

1. That the Washington Terminal Company violated Rule 29 of the controlling agreement when Reginald Nathaniel Douglas was unjustly suspended on April 9, 1978, then subsequently dismissed on May 2, 1978.
2. That accordingly, the Washington Terminal Company be ordered to reinstate Claimant R. N. Douglas with vacation and seniority rights unimpaired and compensated for all time lost since April 9, 1978.

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 subject to an investigative hearing on the following charges:

- "1. Falsifying your application for employment with The Washington Terminal Company, on February 5, 1976.
2. Violation of that part of General Rule 'O', 'No employe will be absent from duty without permission,' when on Saturday, April 8, 1978, 'at approximately 1:15 p.m., you were off the property in the vicinity of the Metro subway entrance to the National Visitors Center.'"

Essential to the resolution of this dispute is an understanding of the sequence of events involved therein. On April 8, 1978, information came to the Carrier that the Claimant had been found by a police officer off the property during his working hours under suspicion of smoking marijuana. At that time the Claimant was suspended, presumably pending further investigation. Four days later, however, the police was killed in an accident, and the Carrier determined,

because of this, that the charges against the Claimant could not effectively go forward. The Carrier thereafter attempted to return the Claimant to duty. When the Claimant appeared several days later for other purposes, he was -- according to the Carrier -- advised that he would be returned to duty (although the Claimant denies that he was so informed). As part of the processing, Claimant was advised to obtain a Criminal Arrest History from the Washington Metropolitan Police. According to the Carrier, this was done because Claimant had originally been hired during a one-year period during which such records were not being processed by the Metropolitan Police, so that this later completion of employment records was "routine" in such circumstances.

Up to this point, the Board finds no basis to question the Carrier's actions. The suspension was not improper for suspected smoking of marijuana during duty hours and the absence of the employee from duty, even though the propriety of the suspension and any resulting permanent discipline was never brought to an investigative hearing. This period of suspension, in any event, is not the dispute for review by the Board.

Claimant did obtain the Criminal Arrest History (and, during a later investigative hearing, was permitted to verify the information therein contained). This record shows a previous conviction and suspended sentence. On his employment application, the Claimant had answered in the negative to the question, "Have you ever been convicted of a criminal offense other than a minor traffic violation?" The application includes the warning:

"I further understand that the furnishing of false information in connection with my application for employment is good cause for rejection or dismissal from service."

Based on this, an investigative hearing went forward based on the alleged false answer on the employment application and the absence from duty.

The hearing was conducted in a fair manner. The Board does not agree with the Organization's allegation that the Carrier singled out the Claimant in requiring him to obtain the arrest history. This might have been done by the Carrier at any point, although it chose to do so when it was in the process of returning the Claimant from a suspension which, on its own initiative, the Carrier was revoking. Nor is the Board convinced that the Claimant was unaware that his previous court appearance was other than a conviction. On the second charge, the Claimant was shown to have been improperly absent from duty.

Award No. 8142 (Scearce) is instructive in that it deals with similar circumstances of the discovery of a criminal record when the employee was being processed for re-employment. In addition, Award No. 6391 (Lieberman), although dealing with accident history rather than criminal record, offers further reasoning as to the propriety of dismissal for false information on an employment application:

"The employment application is a tool which the Carrier may appropriately use in his employment decision for either rejection, or further investigation prior to making a decision. In this case an accurate answer to Question 14 would at minimum

"have given the Carrier the option of further investigation. This Board has consistently held that employees who falsify applications for employment are subject to discharge regardless of the time lapse between the date of application and the date of discovery. (Second Division Award 5944 and Third Division Awards 11328, 14274, 18103 and others)."

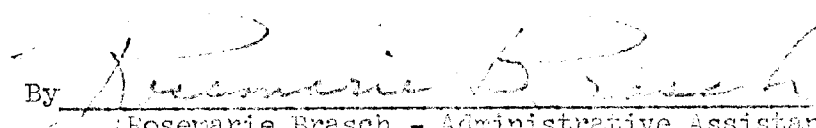
A W A R D

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 5th day of March, 1980.