

The Second Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

Parties to Dispute: { System Federation No. 45, Railway Employees'  
                                  { Department, A. F. of L. - C. I. O.  
                                  { (Firemen & Oilers)  
                                  { St. Louis Southwestern Railway Company

Dispute: Claim of Employees:

1. That under the current Agreement Laborer, Earl Hines, was unjustly dismissed from the service of the St. Louis Southwestern Railway Company on August 31, 1978.
2. That accordingly, the St. Louis Southwestern Railway Company compensate Laborer, Earl Hines, at the pro rata rate of pay for each work day beginning August 31, 1978, until he is reinstated to service and in addition to any other employee in active service, including vacation rights and seniority unimpaired.

Claim is also made for Laborer, Earl Hines, for his actual loss of payment of insurance on his dependents and hospital benefits for himself, and that he be made whole for pension benefits including Railroad Retirement and Unemployment Insurance, and in addition to the money claimed herein, the Carrier shall pay Mr. Hines an additional sum of 6% per annum compounded annually on the anniversary date of said Claim.

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 waived right of appearance at hearing thereon.

Earl Hines, a laborer at carrier's East St. Louis terminal, was dismissed from service for allegedly falsifying his employment application, a violation of Rule 801 of the General Rules and Regulations. An investigation into the matter was held on June 29, 1978. The claimant was found to be guilty. By letter dated August 31, 1978, claimant was dismissed from service. The basis for his dismissal was that he failed to indicate on his employment application that he had received back injuries or had lost time as a result of accidents prior to being employed by the carrier.

This Board has no objection to the carrier's position that it has the right, at any time, to discipline an employee for a proven falsification of an employment application. That principle is well grounded in arbitrable law and is followed in this industry, as well as in many other industries in this country. It is also important to note that successful employment over a long period of time has often served to mitigate against an employee being discharged for such an act.

The question of mitigation, however, is not the prime consideration in this case. The record before us is barren of any probative evidence that the claimant was, in fact, injured on the job or received any injuries to his back prior to coming to work for carrier. All of the information used by carrier to conclude that the claimant had falsified his employment record was hearsay. There are no documents in the record indicating that the claimant had received a back injury prior to employment with the carrier. Testimony by the carrier's witness concerning what he had learned as a result of discussions with General Motors' employees is hearsay. The document submitted by carrier as Exhibit A, Page 18, is also hearsay. The typed statement included on the document characterizing the investigator's findings does not list any facts or disclose the source of information on which the conclusions were drawn. No witnesses with any firsthand knowledge of claimant's medical record prior to employment with carrier were called.

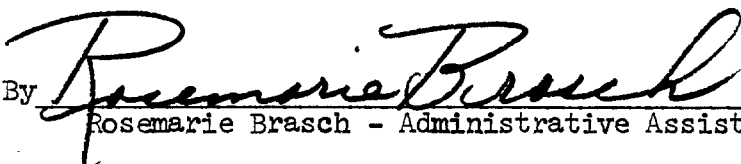
This Board has, on numerous occasions in the past, considered and based a decision partly on hearsay evidence. Hearsay is proper and acceptable in the forum in which we operate. It is not proper, however, to allow hearsay evidence to be conclusive in a case and to base a decision solely on such evidence when it may have been possible for the charging parties to produce more probative evidence and call witnesses with direct knowledge of the act for which an employee is being disciplined. To base a decision on hearsay evidence would be to deny the claimant and his representative any opportunity to question the statements made or to cross-examine the people who made them. By relying solely on hearsay evidence, the carrier has not carried its burden of proof and its charges cannot be sustained.

A W A R D

Claim sustained. No interest is awarded, in keeping with this division's past policy.

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 16th day of April, 1980.