

The Second Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

Parties to Dispute: { International Brotherhood of Firemen & Oilers
{ Louisville and Nashville Railroad Company

Dispute: Claim of Employees:

1. That under the current and controlling Agreement, as amended, Service Attendant J. R. Ayres, I. D. No. 371663, was unjustly dismissed from the service of the Louisville and Nashville Railroad Company on May 16, 1980, after a formal investigation was held in the office of Mr. R. G. Littrell, Asst. Master Mechanic and Conducting Officer, on Wednesday, April 16, 1980.
2. That accordingly J. R. Ayres, Service Attendant, be restored to his regular assignment at L&N Decoursey Shops, Covington, Kentucky, compensated for all lost time and that he be properly restored to his rightful position. Vacation, health and welfare, hospital and life insurance and dental insurance be paid effective May 7, 1980, and the payment of 6% interest rate be added thereto.

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.

This case arises from an application for employment (Family Lines Application for Employment Form) that was filled out and submitted to the Carrier on December 12, 1979, by James Robert Ayres, Claimant in these proceedings. Pursuant to his application, Claimant was employed in the Mechanical Department at Carrier's Decoursey Shops, and established seniority as a Service Attendant at that location on January 8, 1980.

Claimant was charged with giving false information with regard to marking his application "no" in answer to the following question:

"Have you ever served in the United States Military Service?"

After investigation and hearing, Claimant was dismissed from service, with the Carrier contending that Claimant violated Rule 32 of the controlling Agreement.

Carrier contends that Claimant's admitted actions fully justified Claimant's dismissal from service, and that the claim should be denied in its entirety. Carrier further contends that Claimant did in fact give false information concerning time spent in the United States Military Service in his application for employment with the Carrier; that the fair and impartial investigation of charges brought against Claimant proved him guilty of an offense which fully justifies dismissal from service; and that the awards of this Board support a denial of Award in this case. Last, Carrier argues that Claimant's relative short tenure as an employee further militates against a favorable finding on the Claimant's behalf.

In the main, Claimant argues that the penalty of discharge is excessive. Claimant, in support of this position, notes that he was, at the time of the instant claim, assigned to work Friday through Tuesday from 11:00 p.m. until 7:00 a.m. with Wednesday and Thursday as rest days. Claimant further contends that he performed the duties of sanding, fueling and servicing diesel locomotives and other related duties covered by the controlling Agreement in a satisfactory manner. Further, Claimant asserts that the only exception taken by the Carrier to the information given in Claimant's Employment application was that Claimant failed to list his military service. The record shows that Claimant served approximately three weeks in the navy from November 8, 1978 through November 28, 1978. Discharge under these circumstances is an abuse of managerial discretion.

After careful review of this record, the Board finds that while falsification on an employment application is indeed a serious breach of rules, the Board is also of the opinion that termination in the instant case is deemed to be excessive. In so finding, Board does not wish to convey that it is in any way dismissing the seriousness of the infraction as a general proposition. Yet, the Board does not find from the evidence presented, including all the factors in mitigation, that imposition of the ultimate disciplinary sanction is justified. In ruling to reinstate the Claimant, the Board also finds that no back pay compensation or other monetary benefits shall be awarded.

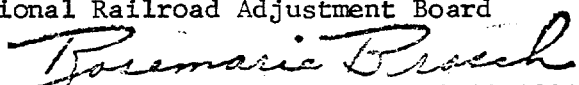
A W A R D

Claim sustained in part. Claimant is ordered reinstated with full seniority rights, except without backpay or other monetary benefits.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 15th day of December, 1982.