

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

Parties to Dispute: (International Brotherhood of Firemen and Oilers
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(Consolidated Rail Corporation

Dispute: Claim of Employees:

1. That, in violation of the current agreement, Laborer S. Hlabse was unjustly dismissed from service of the Carrier following trial held on October 20, 1980.

2. That, accordingly, the Carrier be ordered to make the afore-mentioned S. Hlabse whole by restoring him to Carrier's service, with seniority rights unimpaired, made whole for all vacation rights, holidays, sick leave benefits, and all other benefits that are a condition of employment unimpaired, and compensated for all lost time plus ten [10%] percent interest annually on all lost wages, also reimbursement for all losses sustained account of coverage under health and welfare and life insurance agreements during the time he has been held out of service.

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 employes 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 was employed as a Laborer at the Carrier's Collinwood Diesel Terminal, Collinwood, Ohio with approximately three and one-half (3-1/2) years of service. The Claimant, following a hearing on October 20, 1980, was dismissed from service for the following offense:

"Fraudulent and dishonest conduct when you furnished false information to Conrail on the application for employment form dated 1-4-77 and Form MD-2 Report of health examination (Pre-employment physical) dated May 10, 1977, in connection with a physical disability which came to the attention of Conrail on or about 8-12-80."

The Carrier reports that when its Claim Agent interviewed the Claimant concerning his claim on/about October 12, 1980, of a current injury on the job he was informed by the Claimant:

"this was a reoccurrence of a back injury he received while working for a machine shop in Willoughby, Ohio prior to employment with Conrail."

The Claim Agent testified that the Claimant also told him his medical treatment for that injury continued even after he started working for Conrail. The Agent, in subsequently checking with the medical department, found no mention of the previous injury in any of the records.

The Carrier contends the pre-employment forms contain important information upon which it relies in making employment decisions and it has the right to expect such information to be truthful.

The Claimant testified that the original injury occurred in February 1977 after he submitted his January 4, 1977 application.

However, no explanation is offered by the Claimant as to why his injury and subsequent medical treatment was not reported by him to the company's physician during his pre-employment physical on May 10, 1977. Nor is there any evidence in the record wherein the Claimant supports his contention that his earlier injury occurred in February 1977 and after he applied. Without some corroboration, his assertion is found to be somewhat self-serving.

Third Division Award 15506 appropriately noted:

"It first should be said here that it is not every misstatement of a fact in obtaining employment that on discovery would disqualify the employe from remaining in service after serving for sixty days. For instance, the misrepresentation may have been innocently and mistakenly made. It might involve immaterial matters, or that which was false at the time may have since become harmless. The true test is, (1) did the employe intend to deceive, (2) was the carrier deceived, (3) had there been full and honest disclosure would the employe have been hired, and (4) was the deception such as presently makes the one guilty thereof an unfit person to remain in service."


The record supports the Carrier's assertion that the Claimant failed to make a full and honest disclosure of his medical condition at the time of his employment, and consequently is found guilty of fraudulent and dishonest conduct as charged.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 18th day of April, 1984