

The Second Division consisted of the regular members and in addition Referee W. J. Peck when award was rendered.

Parties to Dispute: (International Brotherhood of Firemen and Oilers
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(Indiana Harbor Belt Railroad

Dispute: Claim of Employees:

1. That, in violation of the current agreement, Labor Randall L. Will was unjustly dismissed from service of the Carrier following trial held in absentia on March 26, 1981.

2. That, accordingly, the Carrier be ordered to make the aforementioned Randall L. Will 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.

This dispute involves the following facts and circumstances: Claimant was employed as Laborer by the Indiana Harbor Belt Railroad, hereinafter, referred to as the carrier, at Carrier's Gibson Engine House, Gibson, Indiana. On date of March 23, 1981, Carrier sent a directive to Claimant instructing him to appear for trial in the office of the General Foreman at the Gibson Engine House at 10:00 a.m. Thursday, March 26, 1981. The purpose for which the trial was called was allegedly:

"To determine the facts and your responsibility if any, in connection with the following:

Falsification of application for employment with the Indiana Harbor Belt Railroad concerning your past medical history and previous employment status."

Claimant was also advised that he could arrange to have a representative of his Organization and/or witnesses present if he desired. Testimony at the trial indicates that Claimant did receive and did acknowledge receipt of the notice of the trial. The trial was held as scheduled but postponed approximately 33 minutes to allow Claimant's representative, who was present, time to contact the Claimant who had not appeared. The record indicates that Claimant's representative was able to contact Claimant who advised that he would not appear as he did not receive the notice letter at his address on the 23rd of the month and had made a doctor's appointment and "could not come at the present time". Claimant apparently did not request a postponement, and the trial was then held with Claimant "in absentia". Claimant was charged "falsification of his employment application" during the course of the hearing we find the following:

Hearing officer questions the Assistant Superintendent of Locomotives:

"Mr. Schiewer: Mr. Fazekas, please state your name, occupation and assignment.

Mr. Fazekas: Jerome J. Fazekas, Assistant Superintendent of Locomotives, I.H.B. Railroad.

Mr. Schiewer: When an employee contacts the I.H.B. Railroad requesting employment, do they fill out an application for employment?

Mr. Fazekas: Yes, they do.

Mr. Schiewer: And is this application for employment filled out in the person's own handwriting?

Mr. Fazekas: Yes, it is.

Mr. Schiewer: Would this be a copy of the application for employment prepared by Mr. Randall L. Will?

Mr. Fazekas: Yes, this is a copy of the application for employment prepared by Mr. Randall L. Will.

(Here the application for employment was shown to Claimant's representative.

Mr. Schiewer: One of the questions asked and I quote, 'Have you ever been injured?' What was the answer indicated by Mr. Will?

Mr. Fazekas: Mr. Will answers under item #2 on application, no.

Mr. Schiewer: Did Mr. Will indicate where he was previously employed prior to the application prepared?

Mr. Fazekas: Yes, under 'Previous Employment History' in Mr. Will's own Handwriting, it states Gust K. Newberg, 'Type of Business-- Construction' employed from January of 1967 to March of 1979 as a Laborer.

Mr. Schiewer: And at that particular trial did you question Mr. Will in regards to his past injuries that he may have received?

Mr. Fazekas: Yes, I did.

Mr. Schiewer: And could you state for this trial what Mr. Will's answer was?

Mr. Fazekas: I asked Mr. Will if he had any past injuries to his back at anytime, and Mr. Will's answer was, 'Not with the railroad, I didn't.

I asked Mr. Will, did you ever have an injury at one time or another? He stated, 'I pulled a muscle a long time ago in my back, but it was nothing, nothing compared to this, no real time lost or anything, just a pulled muscle, no ruptured discs of anything because I had X-rays and everything checked out.

Mr. Schiewer: With reference made to Mr. Will's statement that he had had a previous injury, have you obtained any information regarding where that injury did occur?

Mr. Fazekas: Yes, when Mr. Will was employed with the Gust K. Newberg Company he was injured. In fact, he had a back injury. I obtained his information through Gust K. Newberg...the state, lots of treatment for back problems, no surgery.

Mr. Schiewer: Do you have a copy of the pre-employment examination request prepared by Mr. Will?

Mr. Fazekas: Yes, I do.

Mr. Schiewer: Is one of those areas in regards to previous back injuries?

Mr. Fazekas: Yes, one of the areas is so indicated, Back trouble, Lumbago or Sciatica.

Mr. Schiewer: And what was Mr. Will's answer to the question regarding his back injuries?

Mr. Fazekas: His answer was no.

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Mr. Schiewer: Is this application signed by Randall L. Will?

Mr. Fazekas: Yes, under 'Applicants Signature,' it is signed, Randall L. Will.

Mr. Schiewer: Therefore, Mr. Will was knowledgeable according to the form you just read that anything short of the truth in the preparation of this paper could be grounds for dismissal.

"Mr. Fazekas: That is correct.

Mr. Schiewer: Then in your opinion, did Mr. Will falsify his employment application and past medical history?

Mr. Fazekas: Yes, Mr. Will did falsify medical services report when filing for application for employment on the I.H.B. Railroad.

Mr. Schiewer: Did he falsify his application for employment?

Mr. Fazekas: His application for employment was also falsified under, as I stated previously, item #2, 'Have you ever been injured?' Mr. Will stated, 'No.'"

At this point Claimant's representative was given the chance to question Mr. Fazekas and did ask a couple of questions which in no way contradicted the previous testimony.

"Mr. Schiewer: Examination, MD-202 does the questionnaire make any mention about receiving compensation from any injury at work?

Mr. Fazekas: Yes, it does, it questions, 'Have you ever received compensation for an injury at work?' Mr. Will's answer was, 'No.'

Mr. Schiewer: With reference made to injury Mr. Will received from his previous employment, was there compensation made from that injury?

Mr. Fazekas: Yes, there was a case pending at Industrial Committee and a settlement was obtained from his last place of employment, Gust K. Newberg Company.

Mr. Schiewer: Therefore, did Mr. Will answer the question correctly?

Mr. Fazekas: No, he did not, he falsified the answer and his application."

On date of April 3, 1981, Claimant was notified by the Carrier that account falsification of application for employment he was dismissed from Carrier Service.

The employees argue that Carrier's action in holding this trial and dismissing Claimant from service was an arbitrary, capricious, and unjust action and an abuse of managerial discretion and that a fair trial was not held, however, we do not find their arguments persuasive. It is rather clear from the record that Claimant did falsify his employment application and in more than one way. And we do feel that Carrier does have a right to expect honesty from their employees just as the employees expect carrier to be honest with them. We see no reason to disturb the penalty imposed and shall not do so.

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Award No. 9896
Docket No. 9850
2-IHB-F&O-'84

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 9th day of May, 1984