

The Second Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

Parties to Dispute: (International Association of Machinists and Aerospace Workers
(Indiana Harbor Belt Railroad Company

Dispute: Claim of Employees:

1. That the Indiana Harbor Belt Railroad Company be ordered to restore Machinist M. J. Grauvogl to service and compensate him for all pay lost up to time of restoration to service at the prevailing Machinist rate of pay.
2. That Machinist M. J. Grauvogl be restored to service with seniority unimpaired and compensated for all insurance benefits, vacation benefits, holiday benefits and any other benefits that May have accrued and were lost durring (sic) this period, in accordance with Rule 36 of the prevailing Agreement effective January 1, 1947 as subsequently amended.

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 charged with falsifying his application for employment and theft of Company material. After an investigative hearing, he was dismissed from Carrier's service.

With respect to the falsification issue before us, on his employment application dated December 10, 1973, Claimant's answer to the question "Have you ever been convicted of a crime?" was "no". Moreover, at the investigation, the Claimant acknowledged that he had been arrested and convicted of a crime prior to being hired by the Carrier.

The Board is aware and does not discount as unreasonable the Organization's contention that the Claimant had considered the arrest removed from his record at the time that he completed the application, since he was a juvenile at the time. However, the question, which he answered in the negative, leaves little doubt as to the specific nature of the information being sought. We can only conclude, as did the Carrier, that he knowingly falsified his response to it. Furthermore, the certification part of the application form signed by the Claimant clearly warns that false statements contained therein will justify and cause termination "regardless when such fact may be discovered by the Company". The employment application is one of the primary tools used to make employment decisions, either to reject the applicant or investigate further. This Board has consistently held that falsification of an employment application may lead to discharge, regardless of the time lapse between the date of the application and the date of discovery.

With regard to the due process arguments advanced by the Organization, while these are not without merit under certain circumstances, given the record herein, we do not find the Claimant's rights to have been violated.

With respect to the other charge, we find that the Carrier has met its burden of proof.

In sum therefore, the Board has no basis to disturb the penalty assessed by the Carrier.

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 27th day of February 1985.