

The Second Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

(International Brotherhood of Electrical Workers
Parties to Dispute: (
(Southern Pacific Transportation Company (Western Lines)

Dispute: Claim of Employees:

1. Under the current agreement, Mechanical Department Electrician T. R. Winn was unjustly disciplined when he was dismissed from service on May 4, 1982, following investigation for alleged violation of portions of Rule 801 of the General Rules and Regulations of the Southern Pacific Transportation Company (Western Lines). Said alleged violation occurring on July 12, 1979.

2. Accordingly, the Southern Pacific Transportation Company (Western Lines) be ordered to restore Electrician T. R. Winn to service with all rights unimpaired, including service and seniority, vacation, payment of hospital and medical insurance, group disability insurance, railroad retirement contributions, and loss of wages, including interest at the rate of 6 per cent (6%) per annum.

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 to appearance at hearing thereon.

Claimant, Electrician T. R. Winn, was dismissed from service by the Carrier, Southern Pacific Transportation Company (Western Lines), on May 4, 1982, following investigation of a charge that he had falsified his employment application in violation of General Rule 801. The alleged violation occurred on July 2, 1979.

The Organization filed a Claim on the Claimant's behalf, challenging his dismissal.

The Organization contends that the Claimant was unjustly dismissed, and the Carrier handled his case in an arbitrary and capricious manner.

The Organization argues that the Claimant's negative answers to questions about his medical history on the employment application were not given in an attempt to be dishonest or mislead the Carrier. The Claimant simply believed that his past, minor back muscle strains were not "back trouble" of the sort referred to in the questions. The Claimant did not intend to be dishonest, but just misunderstood the questions.

The Organization contends that the Carrier failed to prove that the Claimant was dishonest and guilty of the charge. Because the Carrier did not meet its burden of proof, the Claimant's dismissal was discriminatory, arbitrary, and capricious.

The Organization contends, therefore, that the Claim should be sustained and the Claimant returned to service with all rights and benefits unimpaired, and all lost wages plus 6 percent interest per annum.

The Carrier contends that there is substantial evidence in the record that the Claimant falsified his employment application. The Carrier asserts that the Claimant did so knowingly in order to gain employment. The evidence in the record establishes that the Claimant violated Rule 801, which states: "Employees will not be retained in the service who are...dishonest..." The Carrier points out that the Claimant admitted his previous back injuries and that he had received compensation for one of them; he stated that he did not report these on his application either because he thought them unimportant or he forgot them. The Carrier asserts that the Claimant made a conscious and considered decision not to report these accidents.

The Carrier contends that the Claimant's falsification of the employment application is a serious offense that justifies dismissal. Had the Carrier known the Claimant's true medical history, he would not have been hired.

Although the Carrier asserts that the Claim is without merit, it argues that if this Board should sustain the Claim, then the Board should deduct earnings in other employment from any compensation for lost time. Further, there is no support in the agreement, practice, or precedent for the interest Claim. Finally, the Claimant was allowed all vacation pay to which he was entitled at the time of his dismissal.

The Carrier therefore contends that the Claim is without merit and should be denied.

This Board has reviewed all of the evidence and testimony in this case, and it finds that there is sufficient evidence in the record to support the finding that the Claimant is guilty of dishonesty for falsifying his employment application in violation of General Rule 801.

This Board has consistently held that falsification of an employment application may lead to discharge regardless of the time lapse between the date of application and the date of discovery. (See Second Division Awards 10286, 7430, 6391.)

This Board will only set aside an action taken by a Carrier if it finds that it was unreasonable, arbitrary, or capricious. There is nothing in this record that leads us to substitute our judgment for that of the Carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:

A handwritten signature in cursive script, appearing to read "Nancy J. Dever", written over a horizontal line.

Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of October 1985.