

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Paul G. Jasper, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

RAILWAY EXPRESS AGENCY, INC.

STATEMENT OF CLAIM: Claim of the District Committee of the Brotherhood that:

(a) The agreement governing hours of service and working conditions between Railway Express Agency, Inc., and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, effective September 1, 1949, was violated at Springfield, Massachusetts in the treatment accorded Raymond Sokolowski in dismissing him from service January 21, 1950, without an investigation and without apprising him in writing of the precise charge against him; and

(b) He shall be restored to the service with seniority rights unimpaired and compensated for full salary loss retroactive to and including January 21, 1950, at the rate of \$60.68 basic per week.

OPINION OF BOARD: The Claimant was employed as a foreman by the Carrier at Springfield, Mass. He entered the Carrier's service April 28, 1942. Claimant was dismissed by the Carrier January 21, 1950 because he had made a material false answer on his application of employment.

The record reveals that the Claimant in filling out his application for employment had answered question No. 11 in the negative, whereas, he had been charged with a crime when he was 17 years of age, which was approximately four years before he filled out his application for employment.

The Carrier upon discovering the facts dismissed the Claimant under paragraph 2 of Rule 27. Rule 27 is as follows:

"The applications of new employees shall be approved or disapproved within ninety (90) days after the applicant begins work, unless a longer time is mutually agreed to by the management and the duly accredited representatives of employees.

"In the event of applicant giving materially false information, the ninety (90) day time limit will not apply."

The basic question to be decided is whether or not the answer of "No" to question No. 11 on the application for employment was "materially false" information.

The second paragraph of Rule 27 was changed years ago by adding the "materially" immediately preceding the word false. Prior to the addition of the word "materially" any false information would be cause to suspend the 90 days in which the Carrier must act on the employment application.

It cannot be questioned that the Railway Express Agency, Inc. must use the utmost caution in whom it employs because it is handling property and money of third persons. Therefore, it is very material that correct information be obtained on the application of employment. Question No. 11 is a material question and the answer would be very material. The information given in answer to question No. 11 comes within the second paragraph of Rule 27.

The Claimant in giving materially false information came within the exceptions set out in Rule 29 which provides:

"Except as provided in Rule 27, an employee who has been in service more than thirty (30) days or whose application has been formally approved shall not be disciplined or dismissed without investigation, at which investigation he may be represented by an employee of his choice or duly accredited representative. He may, however, be held out of service pending such investigation. He shall have at least twenty-four (24) hours' advance notice of such investigation and shall be apprised in writing of the precise charge against him within seven (7) days of knowledge by the Management of the alleged offense. The investigation shall be held within seven (7) days of the date when charged with the offense or held out of service, otherwise the employee, if held out of service, shall be returned to his former position and compensated for wage loss sustained. A written decision will be rendered within seven (7) days after completion of investigation."

In other words whenever materially false information is given on the application of employment the Carrier has the right when the correct information comes to its attention to dismiss summarily the employee without giving him the benefit of an investigation.

The Claimant asked for and was given a hearing. We feel that Rule 34 was involved and the Claimant was given the benefit of an impartial and fair hearing.

By giving materially false information on his application of employment the Claimant's employment was in substance obtained by fraudulent information and the Carrier upon obtaining the correct information could dismiss the Claimant whether or not one month or eight years had passed. There is no showing made that the Carrier did not act on the correct information within reasonable time after it came to its attention.

This case is not a matter of discipline, but the obtaining of employment by false information which gives the Carrier the right to deny employment to a man giving materially false information. We cannot consider whether or not the acts of the Carrier were arbitrary, capricious or unreasonable and an abuse of discretion. The question is was the information materially false, if so, then the Carrier had the right to dismiss the man.

We are dealing with Rules as written. Equity cannot be considered. The Rules here considered are not ambiguous. If the Rules are to be changed it must be done under the Railway Labor Act.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

The Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois this 31st day of October, 1952.