

Award No. 11328

Docket No. CL-13609

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

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

NEW YORK CENTRAL RAILROAD — EASTERN DISTRICT

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5241) that:

1. Carrier violated the current Clerks' Agreement when it arbitrarily and improperly discharged Richard M. Klosse, a Key punch Operator in the office of Auditor Car Accounts, Buffalo, N.Y., without just cause.
2. Richard M. Klosse be restored to service with seniority and all other rights unimpaired and his record cleared.
3. Richard M. Klosse be reimbursed for all wage loss sustained on and after February 12, 1962.

OPINION OF BOARD: Claimant made application for employment with the Carrier on October 26, 1956. He was employed on the basis of the application and started work on October 29, 1956. One of the questions on the employment application was: "Have you ever been arrested?" Claimant answered: "No".

A routine check of employment applications disclosed that Claimant was arrested on April 4, 1954 and was charged with violating Section 887 sub. 4 of the Criminal Code of Procedure. He was released on \$200.00 bail, and he was arraigned before Judge C. Partyka of the City Court of Buffalo, New York, on April 5, 1954. Claimant was represented by a lawyer. He pleaded guilty to the charge and on April 26, 1954 he received a suspended sentence and placed on probation for an indefinite period. The case was closed by the Probation Department on June 2, 1955.

Employees contend that Claimant did not believe he had been arrested, that he did not wilfully intend to falsify his application, and that it was improper to investigate Claimant's application more than five years after his employment.

Rule 21 of the Agreement reads as follows:

"The applications of new employees shall be approved or disapproved within 60 days after the applicant begins work.

"In the event of applicant giving false information, this rule shall not apply."

The application for employment contains the following:

"That any untrue statement herein made by me or any concealment of facts in this application shall be considered and accepted by me as just cause for the company to dismiss me from its service, regardless of when such fact may be discovered by the Company."

Whatever the intent of the Claimant may have been, there is no merit to the contention that he did not know he had been arrested. He posted bond, he appeared in court, he pleaded guilty, and he reported to a probation officer.

We have consistently held that an employe who falsifies his employment application, irrespective of the elapsed time between the date of the application and the date when the falsification was discovered, is subject to discharge. Awards 10090 (Mitchell), 5994 (Jasper), 5665 (Wyckoff), 4391 (Carter) and 4328 (Elkouri).

The record compels us to sustain the discharge.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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

That the Carrier did not violate the Agreement.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of April 1963.