



Award No. 14274

Docket No. CL-15521

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5744) that:

1. Carrier violated the Clerks' Rules Agreement at St. Paul, Minn. when, on April 17, 1964 it notified Employee J. R. McDonough that his application had not been approved thereby terminating his employment as of that date.

2. Carrier shall now be required to return J. R. McDonough to service and compensate him for all loss sustained from April 17, 1964 until the violation is corrected.

EMPLOYEES' STATEMENT OF FACTS: Employee J. R. McDonough was hired and established a seniority date as a Mail Handler at St. Paul, Minn. in Seniority District No. 29 of November 12, 1963. He continued in the service, accepting all work for which he was called in accordance with his seniority until April 17, 1964.

The record does not show, nor has the Carrier contended, there was any complaint as to his services or conduct during that more than 5 month period of his employment. However, under date of April 17, 1964 Mr. P. F. Mueller, Agent, addressed the following letter to employee McDonough:

"Mr. Jas. R. McDonough
123 West Lawson
St. Paul, Minnesota 55117

Dear Sir:

This is to advise you that your application for employment has not been approved."

On May 1, 1964 General Chairman H. V. Gilligan and Local Chairman T. E. Fontaine discussed the disapproval of employee McDonough's application and termination of his services with Superintendent F. J. Kuklinski and Agent

mitting the Crime of "Disorderly Conduct." Upon arraignment, he entered a plea of Guilty and was sentenced to 90 days in the workhouse. Attached hereto as Carrier's Exhibit G is a certified copy of the Criminal Register covering the above crime.

1963 - On June 7, 1963, Mr. McDonough was arrested and charged with wrongfully, unlawfully and willfully committing the Crime of "Disorderly Conduct." Upon arraignment, he entered a plea of Guilty and was sentenced to 90 days in the workhouse, to serve 30 days and balance of 60 days suspended to June 6, 1964 with defendant placed in charge of Court. Attached hereto as Carrier's Exhibit H is a certified copy of the Criminal Register covering the above crime.

When it was discovered that Mr. McDonough had a police record and, therefore, had in fact given detrimental false information on his Application for Employment form in that his "No" answer to the question "Have you ever been convicted of a crime" was untrue, his application was disapproved and he was removed from Carrier's service effective April 17, 1964.

There is attached hereto as Carrier's Exhibit I copy of letter written by Mr. S. W. Amour, Assistant to Vice President, to Mr. H. V. Gilligan, General Chairman, under date of September 8, 1964.

OPINION OF BOARD: The Claimant was hired on November 12, 1963, at which time he filled out and signed an Application for Employment form. Claimant was removed from Carrier's service effective April 17, 1964 after the Carrier determined that he had given detrimental false information on his Application for Employment form.

The record reveals that one of the questions on said form was "Have you ever been convicted of a crime?" and that the Claimant answered in the negative. Carrier subsequently discovered that the Claimant had a police record, which included arrests and several convictions of misdemeanors between May 1959 and June 1963.

The Carrier's Agent upon discovering the facts addressed a letter to the Claimant which in part reads as follows:

"This is to advise you that your application for employment has not been approved."

The pertinent provisions of the controlling Agreement between the parties are as follows:

"RULE 13. APPLICATIONS

The applications of new employees shall be approved or disapproved within sixty (60) days after the applicant starts work. Applicants not so notified will be considered accepted. In the event of applicant giving detrimental false information, this rule shall not apply." (Emphasis ours.)

"RULE 22.

DISCIPLINE AND GRIEVANCES

(a) An employee who has been in the service more than sixty (60) days, or whose application has been formally approved, shall not be disciplined or dismissed without investigation and prior thereto the employee will be notified in writing of the precise charge. Such charge will be filed with the employee within fifteen (15) days from the date the supervising officer would have knowledge of the alleged offense. At the investigation he may be represented by one or more duly accredited representatives. The employee may be held out of service pending such investigation, however, investigations will be held prior to the time employees are held from service when it is possible to do so." (Emphasis ours.)

The Employees contend that as the Claimant had been in Carrier's service in excess of five (5) months at the time he was summarily dismissed without either written notification of any charges against him or an investigation prior to dismissal, the Carrier violated Rule 22 (a) of the Agreement between the parties.

The Carrier's position is that the Claimant never became an accepted new employee within the meaning of Rule 13 of the Agreement between the parties because his Application for Employment contained detrimental false information. Therefore, his application was never approved and he was properly dismissed from service without written notice of charges and an investigation as provided by Rule 22 (a) when the Carrier discovered that the Claimant's Application for Employment contained detrimental false information.

In the first instance, it should be noted that at no time during this proceeding has either the Claimant or the Employees denied the fact that the Claimant gave false information on his application for Employment form concerning his prior convictions of crimes. Therefore, the Carrier had no obligation to disclose the source of its information or submit in evidence on the property the Claimant's Application for Employment.

Despite the Employees' contention that "misdemeanors" are "offenses" and not "crimes" as defined in Black's Law Dictionary Deluxe Fourth Addition both "misdemeanors" and "felonies" are violations of criminal statutes punishable by fine and imprisonment. The distinctions between the terms in the instant case are not relevant as the denial of a police record containing convictions of either misdemeanors or felonies would constitute giving detrimental false information within the meaning of the last sentence contained in Rule 13 of the Agreement between the parties.

The remaining question to be decided is whether or not the Carrier was required to follow the procedures contained in Rule 22 (a) of the Agreement between the parties before dismissing the Claimant from service after discovering that the Claimant has given detrimental false information in his Application for Employment.

Both parties agree that Rule 13 of the Agreement is not applicable but the Employees contend that Rule 22 (a) grants the Claimant the right to written notice of charges and an investigation which were denied him by the Carrier.

Although the Claimant worked for a period in excess of sixty (60) days for the Carrier prior to his dismissal, he never achieved the status of an accepted employe within the purview of Rule 13. No time limit Rule is applicable to false information given on the application for employment and Carrier acted within a reasonable time after obtaining the correct information by notifying the Claimant that his application had not been approved.

This is not a disciplinary matter involving an employe whose application for employment had been accepted, formally or otherwise, by the Carrier and consequently the provisions of Rule 22 (a) are also inapplicable. We have consistently held that employes who falsify employment applications are subject to discharge despite lapses of time between the dates of application and the dates of discovery. (See Awards 5994 and 11328.)

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1966.