



Award No. 18475
Docket No. MW-18940

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

J. Thomas Rimer, Jr., Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
SEABOARD COAST LINE RAILROAD COMPANY

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

(1) The dismissal of Trackman Eugene Thomas from service as of March 16, 1970 for allegedly "having given false information in your application for employment with the Company when you completed our Form MED-2 on August 27, 1969" was without just and sufficient cause and in violation of the Agreement. (System File G-2-NO-Thomas, E.B.)

(2) Mr. Eugene Thomas be restored to his former position with seniority, vacation and all other rights unimpaired and that he be compensated in the amount he would have earned had he continued in the service, less the amount earned in other employment.

OPINION OF BOARD: Claimant hired August 27, 1969, and was actively employed through January 23, 1970. On November 11, 1969 he sustained an injury while in the Carrier's service as a result of which he was eventually admitted to a hospital for treatment in February, 1970. On April 22, 1970 he was notified to appear at a formal hearing to answer the charge that he had given false information on his application for employment.

The record shows that he answered in the negative to two questions on a form MED-2 used for all applicants during the course of the Carrier's pre-employment physical examination. The form inquires: "Have you ever had or do you now have any of the following?" Item 17 lists "Back trouble?", to which the answer given was "No". Question 8 inquires: "Have you ever received disability payments because of injury or disease? If so give details:", to which the answer given was "No."

During the course of an investigation (by a representative of the Carrier) of the accident which occurred on November 11 it was learned that Claimant had sustained a back injury while in the service of a former employer. The record shows that he received medical treatment and compensation payments from the former employer's insurance company by order of the Florida Industrial Commission.

The Petitioner argues that the dismissal of the Claimant, following discovery of the alleged falsification occurred "150 consecutive calendar days after he had performed first service" and that he was protected from such action by the language of Section 1, Rule 6 which provides that seniority

will be established as of the first day worked, if the application is not rejected within 60 days after the individual first enters service.

It was further argued, with no supporting evidence on the record, that the dismissal was without just cause was "capricious, improper and unwarranted."

The position of the Carrier rests on the evidence contained on the completed form MED-2, on which the answers were supplied by the Claimant and signed by him, certifying to their truthfulness and completeness. A long line of Awards were cited in support of its position, including cases in which the same "time limit" argument was advanced by the Petitioner as in the instant case.

We find the argument of the Petitioner to be without merit. The investigation of the Carrier of the prior injury is in the record, timely action was taken after discovery, and all procedural aspects of the case were fully met.

The Board has upheld the discharge of an employee who had falsified his employment application, irrespective of the elapsed time between the date of application and the date of discovery of falsification. In the extreme, Award 10090 held that laches was not present in the case even though eleven years had elapsed from the date of first service and dismissal for falsification.

The record, and the positions advanced by the parties, do not require the Board to examine the materiality of the prior injury as related to his job with the Carrier, the degree of such injury, nor his comprehension of the significance of the questions on form MED-2, his false answers thereto, nor his understanding of the possible consequences of his act. There is uncontroverted evidence to support the dismissal for falsification of the application for employment and the Board so finds.

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 Employees involved in this dispute are respectively Carrier and Employees 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: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1971.

Keenan Printing Co., Chicago, Ill.

Printed in U.S.A.