

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22369
Docket Number MW-22454

George S. Roukis, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Terminal Railroad Association of St. Louis

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

(1) The removal from service on September 29, 1977 and the subsequent dismissal effective October 14, 1977 of Track Laborer Vidal C. Guerrero was without just and sufficient cause (System File TRRA 1977-34).

(2) The hearing held on October 4, 1977 was not conducted in conformance with Agreement Rule 24.

(3) Claimant Guerrero shall be reinstated with all rights unimpaired and with pay for all time lost."

OPINION OF BOARD: Claimant was charged with falsifying his employment application.

An investigative hearing was held on October 4, 1977 wherein he was found guilty of this specification and subsequently dismissed from service, effective, October 14, 1977.

In the instant case, Claimant had first worked for the Carrier under a different name from 1973 to 1974. His employment name then was Julian Moriel Chavez.

Approximately two years later, on May 28, 1976 Claimant filed a new employment application with Carrier but this time under the name of Vidal G. Guerrero.

Carrier's employment application requires job applicants to indicate name changes. A specific question is incorporated in the form to elicit this information and the manner by which such change was effectuated. Claimant did not detail the fact particulars underlying his name change, but instead answered NO to the question, "indicate any change of name during lifetime?"

It was a **wilful measured response** to an explicit and **unambiguous question**.

This Board, pursuant to its appellate responsibility has carefully reviewed the **investigative transcript** to insure that Carrier strictly observed administrative due **process** standards. We find nothing in the record, after this **consummate examination** that **indicates** the investigation was **inconsistent** with the requirements of **Agreement Rule 24**. On the contrary, we **find** that **Claimant** was provided ample opportunity to conduct an effective affirmative defense.

This Board has long held that **employees** who falsify employment applications are subject to dismissal despite lapses of time between the dates of the application and the dates of discovery. See for example Third Division Awards **4391, 14274, 18103**.

The record clearly shows that **Claimant** committed a very serious offense. It was a **wilful manifestation** which created an **employment** relationship predicated upon fraud and deceit. The law has invariably held such **transactions** to be revokable. Accordingly, we are **compelled under the particular facts and circumstances herein** to deny the claim. We will not discuss Claimant's arrest by federal investigation authorities, except to note judicially that this matter is being considered in another **forum**. We do **note** parenthetically that Carrier failed to include in its submission the falsified **employment** application.

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.

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Claim denied.

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By Order of **Third** Division

ATTEST: *A.W. Pauls*
Executive Secretary

Dated at Chicago, **Illinois**, this **30th day** of March **1979**.