

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22562
Docket Number MW-22738

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(The Chesapeake and Ohio Railway Company
(Southern Region)

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

(1) The dismissal of **Trackman Carl Winston, Jr.** was without just or sufficient cause **and was exceedingly disproportionate to the** offense with which charged (System File **C(So)-D-533/MG-2047**).

(2) **Trackman Carl Winston, Jr.** shall be reinstated to service and **all** other benefits and remedies prescribed in **Agreement Rule 21(e)** shall be extended and **applied to the** claimant."

OPINION OF BOARD: On April 28, 1976, claimant, in applying for employment with the **Carrier** as trackman, completed an Application for **Employment and Placement Health Questionnaire**, as is required of all **applicants seeking employment** with the Carrier. The application for **Employment contains the following statement:**

"I hereby certify that the answers in this application are true and complete. I understand that **any** falsification, misrepresentation, or **significant omission may** constitute just cause for dismissal, regardless of when discovered."

The **Placement Health Questionnaire** contains a similar statement which reads:

"Any untrue statements made or **any** concealment of **material facts shall be considered** and accepted by me as **just cause** for the **Company** to dismiss me from its service, regardless of time when such facts **may** be discovered."

While working for the Carrier, **claimant** received several **on-duty** injuries. In investigation of the injuries, Carrier **learned** that **claimant** had sustained several injuries while **employed** with the **Marison Company, Elgin, Illinois**, and that **neither his prior injuries nor his employment with the Marison Company had been disclosed on his Application for Employment or the Placement Health Questionnaire.**

On October 26, 1977, Carrier's Manager-Engineering addressed a letter to **claimant** reading:

"Attend investigation to be held in **Manager of Engineering Office, 2600 Parsons Avenue, Columbus, Ohio, at 10:00 AM, Wednesday, November 9, 1977.**

"You are charged with falsification of **Application for Employment and Placement Health Questionnaire completed by you on April 28, 1976, by concealing facts concerning previous injuries sustained by you covered by health portion of the forms, which information was made known on October 25, 1977.**

"Arrange for representation and/or witnesses if desired."

The investigation was conducted as scheduled, and on **November 23, 1977**, the **Manager-Engineering** notified **claimant** that it **had been found** that he was at fault for falsification of **Application for Employment and Health Placement Questionnaire by concealing facts concerning previous injuries, and that he was dismissed from the service of the Carrier.**

The **Board** has carefully reviewed the transcript of the **investigation, including** **claimant's** statement, and it is clear that **claimant** did misrepresent facts on his **Application for Employment concerning his employment with the Marison Company, and his injuries while employed by that company.** A letter from the **Marison Company** was read into the investigation, which showed that **claimant** had had three **injuries** while **employed by that Company.**

This Board has consistently held that employees who falsify employment applications are subject to discharge, despite the lapse of time between the date of application and the date of discovery. Awards 11328, 14274, 18103, 18475, 20507 and 21562.

The **claim will be denied.**

As we have decided the case on its merits, it is not necessary to pass upon the procedural issues raised.

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.

A W A R D

claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 16th day of October 1979.