

NATIONAL RAILROAD ADJUSTMENT BOARD

TBIRD DIVISION

Award Number 24688
Docket Number MW-24864

Eckehard Muessig, Referee

PARTIES TO DISPUTE: { (Brotherhood of **Maintenance** of Way **Employees**
(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

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

(1) The dismissal of **Extra Gang Laborer** D. M. Kaiser for alleged **"misrepresentation"** of information on your employment application filed on **8-17-79** was without just and sufficient cause (System File **C#17/D-2489**).

(2) The claimant shall be reinstated with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered.

OPINION OF BOARD: This dispute results from the Claimant's **"no"** response' to a question on his employment application dated August 17, 1979, which asked: **"Have** you ever been convicted of a crime". **However**, subsequent to the filing of the application and after the **Claimant** had been hired by the Carrier, it came to light that he had been convicted of a crime. The Claimant essentially **holds** that the incident, which he did not disclose on his employment application, was considered a misdemeanor at the **time** it occurred, was not a felony, and was one to which he had pleaded no contest on July 6, 1978. **He**, therefore, contends that his response of **"No"** was proper and that he did not willfully falsify his application.

The Carrier, however, argues that because the Claimant was convicted of a crime, whether it was labeled a misdemeanor or felony, prior to filling out his application is not relevant or the issue herein. It maintains that the issue is that he knowingly misrepresented information on his application. This information, if known to the Carrier, **would** have resulted in the application being rejected.

To support its dismissal of the Claimant, the Carrier relies upon Article XI, Section 3, of the National Agreement of October 30, 1978, which states:

"An employee who has been accepted for employment in accordance with Section 1 will not be terminated or disciplined by the Carrier for furnishing incorrect information in connection with an application for employment or for withholding information therefrom unless the information involved was of such a nature that **the employee would** not have been hired if the **carrier had** had timely knowledge of it."

It holds that the information withheld by the Claimant was of such a nature that he **would** not have been **hired** had the Carrier had timely knowledge of it.

The Board finds that the explanation given by the Claimant does not mitigate his action. **He** was aware at the time he completed the application that he had been convicted of a crime, as brought forth in his testimony at the hearing.

The Board has consistently held that when the facts of record establish that an employee has falsified his employment application, as herein, he subjects himself to discharge. We, therefore, on the record before us, have no basis to disturb the Carrier's action.

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:


Nancy J. Lever - Executive Secretary

Dated at Chicago, Illinois this 24th day of February, 1984

