

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 30820
Docket No. MW-31389
95-3-93-3-201

The Third Division consisted of the regular members and in addition Referee Martin H. Malin when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
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(Houston Belt & Terminal Railway Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The discipline imposed upon Track Laborer C.G. Hitchens for alleged falsification of his application for employment and for conduct unbecoming an employee in connection with his being arrested while on Company property on February 20, 1992 was without just and sufficient cause on the basis of unproven charges.
- (2) The Claimant shall be reinstated to service with all benefits and seniority rights unimpaired, his record cleared of the charges leveled against him and he shall be compensated for all wage loss suffered."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

On September 24, 1991, Claimant applied for employment with Carrier. On the application, Claimant responded, "No," to the question, "Have you ever been arrested/convicted of a violation of the law other than a minor traffic offense?"

On February 20, 1992, Claimant was arrested on Carrier's property on a warrant that had been issued after he failed to appear in court on May 8, 1990. Carrier then learned that Claimant had been arrested twice before, on September 8, 1988, and February 14, 1990.

On February 24, 1992, Claimant was notified of an Investigation to be held on March 2, 1992. The notice charged Claimant with falsifying his application and with conduct unbecoming an employee. After several postponements, the Investigation was held on March 31, 1992. On April 14, 1992, Claimant was advised that he had been found guilty of the charges and was dismissed from service for violating Rules L and 602.

The Organization contends that Claimant was denied a fair Hearing because the notice failed to specify the Rules that he was charged with violating, and because the Carrier official who assessed the discipline was not the same official who served as Hearing Officer. The Organization further contends that Carrier failed to prove the charges against Claimant. The Organization maintains that the application question was ambiguous and should be interpreted against Carrier because it was drafted by Carrier. In the Organization's view, Claimant reasonably read the question to ask whether he had been "arrested and convicted," and Claimant answered honestly because, although he had been arrested, he had not been convicted. Furthermore, the Organization contends, Claimant's February 20, 1992 arrest does not constitute conduct unbecoming an employee because the case was still pending at the time of the Investigation and the arrest was false.

Carrier contends that Claimant was given a fair Hearing at which it proved the alleged violations. Carrier further argues that dismissal was an appropriate penalty and is supported by numerous prior Awards of this Board.

The Board has reviewed the record. We find no merit in the Organization's procedural arguments. The charge gave Claimant specific notice of the underlying facts and afforded him an opportunity to prepare a defense. No objection was raised to the charge at the Hearing. Similarly, we find no violation of the controlling Agreement in having two different officials conduct the Hearing and assess the discipline.

On the merits, there is no dispute that Claimant was arrested on September 8, 1988 for resisting arrest and theft by check. Claimant entered a plea agreement whereby he pleaded guilty, and the charges were dismissed conditioned upon the Claimant making restitution and paying for check collection fees.

Although Claimant denied being arrested on February 14, 1990, the record clearly establishes that he was arrested on that date. The arrest stemmed from 17 outstanding warrants and from his resisting arrest on those warrants. The record further establishes that Claimant failed to appear on a scheduled court date, forfeited bond, and a warrant for his arrest was issued. This warrant led to his February 20, 1992 arrest on Carrier's property.

Claimant's defense that he honestly did not believe that the application called for listing arrests unless they resulted in convictions does not persuade us. The application is clear and unambiguous. There would be no reason for Carrier to ask only for incidents which resulted in arrest and conviction. If there was a conviction of a crime, whether the conviction followed an arrest or a voluntary surrender would not be relevant. On the other hand, arrests that may not have resulted in convictions would be information that Carrier would want to know and evaluate in making a hiring decision. Furthermore, Claimant's lack of candor is apparent from the face of the record. Claimant denied being arrested on February 14, 1990, and steadfastly maintained that he had been arrested only once before applying for employment with Carrier. Yet, the official court records introduced on the property clearly establish the February 14, 1990 arrest.

Numerous prior decisions of this Board agree that falsification of an employment application is ground for dismissal. See, e.g., Third Division Awards 24223, 24222, 20507. We see no basis for sustaining this claim.

AWARD

Claim denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 27th day of 1995.