

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 36259  
Docket No. MW-36415  
02-3-00-3-659

The Third Division consisted of the regular members and in addition Referee Nancy Faircloth Eischen when award was rendered.

**PARTIES TO DISPUTE:** (Brotherhood of Maintenance of Way Employees  
(Union Pacific Railroad Company (former Southern  
( Pacific Transportation Company (Western Lines))

**STATEMENT OF CLAIM:**

“Claim of the System Committee of the Brotherhood that:

- (1) The dispute (withheld from service and subsequent dismissal) imposed on Mr. A. L. Pearson for allegedly falsifying his ‘APPLICATION FOR EMPLOYMENT’ FORM 15000 in connection with allegedly failing to indicate a previous conviction of a misdemeanor was without just and sufficient cause and in violation of the Agreement (Carrier’s File 1215134 SPW).
- (2) As a consequence of the violation referred to in Part (1) above, Mr. A. L. Pearson shall now ‘ . . . be immediately reinstated to his respective assigned position and that his seniority and all other contractual rights be restored unimpaired. We are also requesting that he be compensated net wage loss he has suffered since his wrongful dismissal and that all charges be expunged from his personal record.’”

**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 were given due notice of hearing thereon.

On August 11, 1999 Trackman A. L. Pearson was directed to attend an August 19, 1999 Investigation regarding the alleged falsification of his application for employment, Form 15000. Specifically, the Carrier asserted that the Claimant had failed to indicate that he had been convicted of a misdemeanor.

Following said Investigation, the Claimant was found guilty of violating Maintenance of Way Rules 1.1-Safety, 1.6-Conduct, and 70.1-Safety Responsibilities in connection with falsifying his application for employment. As a result, the Claimant was assessed a Level 5 discipline under the Carrier's UPGRADE Discipline Policy and dismissed from service.

By letter dated October 29, 1999, the Organization submitted a claim on behalf of the Claimant in which it maintained that discharge was excessive and unduly harsh, and that the Carrier had violated Rules 1, 4, and 45 of the Agreement in meting out same. Specifically, with respect to Rule 4, the Organization asserted that the Carrier had failed to take any action prior to the Claimant's probationary time limits, and thereafter accepted the Claimant's application for employment. Regarding the merits of the dispute, the Organization contends that the document which the Carrier produced relating to the Claimant's misdemeanor conviction was "nothing more than a Carrier Lotus Note Database that anyone with a little computer knowledge can type up." The General Chairman further noted that the document was not a civil court record, and therefore, could not be accepted as proof of the Claimant's 1990 theft conviction.

The Carrier denied the claim contending that it had proved, with substantial evidence, that the Claimant was guilty of violating the Rules with which he was cited, and that the discipline imposed was reasonable and warranted in view of the seriousness of the offense.

A careful review of the record evidence convinces us that the Claimant knowingly and purposely falsified his application for employment. At the outset, the Claimant indicated only that he had nothing more than a "few" minor traffic violations. In that connection, however, the Claimant admitted that when he went to the local courthouse to "check" his record, the clerk indicated that there was an outstanding speeding ticket and "failure to appear" for same.

The Claimant's assertion that he "didn't remember" being convicted and that he was not "trying to hide anything" is simply not credible. Specifically, the Claimant maintained that he was simply "by-standing" when the theft occurred and that he had "forgotten" the conviction and probationary period until the Carrier "brought it up." In fact, however, it is not disputed that the Claimant was convicted of theft in July 1990, and thereafter convicted of providing false identification to a police officer in June 1992. Both aforementioned crimes were misdemeanors and the Claimant deliberately withheld this information on his employment application.

The Claimant certified the accuracy and truthfulness of his answers on the application for employment. Although the Claimant later admitted that he did have a past police record and not "just" traffic tickets, he was not forthcoming with the information on his employment application, despite a specific question regarding this information. In the circumstances, the Claimant's culpability has been clearly established, and therefore, this claim must be denied.

**AWARD**

**Claim denied.**

**ORDER**

**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 28th day of October 2002.**