

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40095
Docket No. MW-40517
09-3-NRAB-00003-080345**

The Third Division consisted of the regular members and in addition Referee Ann S. Kenis when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference**

PARTIES TO DISPUTE: (

(Soo Line Railroad Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline (termination of employment) imposed by letter dated June 6, 2005 (sic) upon Mr. J. Hautamaki for alleged violation of General Code of Operating Rule 1.2.5 Reporting, GCOR 1.6 Conduct and other unspecified Company rules and policies in connection with alleged failure to provide complete and accurate information on his ‘Pre-Employment Questionnaire’ on March 5, 2005 was arbitrary, capricious, without just cause and in violation of the Agreement (System File D-06-410-002/8-00494).**
- (2) As a consequence of the violation referred to in Part (1) above, Mr. J. Hautamaki shall now be compensated ‘. . . for all lost wages, straight time and overtime, as well as all benefits - including but not limited to all paid and non-paid allowances and safety incentives, expenses, per diem payments, vacation credit, sick time, medical and dental insurance, promotional seniority, plus any and all other benefits generated by timely payment of wages - to which Claimant is entitled but which have been denied as a result of Carrier’s capricious and excessive discipline in dismissing Claimant without just cause. This appeal seeks to**

make Claimant whole as if he were never disciplined and that his record be expunged of any and all allegations of misconduct.”

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.

The Claimant worked as a Track Laborer and had a seniority date of June 20, 2005. After an Investigation held on May 22, 2006, he was dismissed from service for failing to provide accurate and complete information related to his physical condition when he applied for employment with the Carrier.

The record shows that the Claimant reported an on-duty back injury in August 2005 while employed with the Carrier. Upon receipt and review of the medical documentation related to this injury, it was discovered that the Claimant had permanent work restrictions issued on January 21, 2005.

In the process of further investigation, the Carrier determined that the Claimant submitted a “Physical History and Examination Form” prior to his employment. The Claimant disclosed that he had a back injury, but answered “no” when asked if he had any medical disorder or physical impairment. He also answered “no” when asked if there were any limitations which would prevent him from safely performing the assigned duties of his position. The Claimant further attested on this document that all the information he provided was correct.

Notwithstanding the Claimant's insistence that he answered all pre-employment medical questions to the best of his ability, the evidence shows that the Claimant had been provided information prior to his employment with the Carrier concerning his medical restrictions. The record established that the Claimant did in fact withhold that information from the Carrier when he applied for employment.

There is substantial evidence to support the charges in this case. Moreover, the Board studied at length the Organization's procedural and Agreement due process arguments. We find them to be without merit. The Carrier timely initiated the charges, conducted a fair and impartial Hearing and comported in all respects with the Agreement provisions.

It is well established that a material representation on a pre-employment application can subject an employee to discipline. In the instant matter, the Claimant had a lifting restriction that was not disclosed to the Carrier prior to his employment. Had the Carrier been provided with that information, it would have had the opportunity to make an informed decision regarding his employment based on facts that were clearly relevant and material to his work duties. The Claimant's material misrepresentations subjected him to discharge. We find no basis to disturb the Carrier's action.

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 19th day of November 2009.