

Award No. 12813

Docket No. TE-14413

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Levi M. Hall, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

INDIANAPOLIS UNION RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Indianapolis Union Railway, that:

1. Carrier improperly dismissed D. E. Isaacs from its service effective September 3, 1963.
2. Carrier shall reinstate D. E. Isaacs to the Carrier's service with all rights unimpaired and compensate him for all time lost.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an agreement by and between the parties hereto, effective August 16, 1948, and as amended. Copies of said agreement are assumed to be on file with your Board and are, by this reference, made a part hereof.

This is a discipline case.

D. E. Isaacs, the aggrieved, hereinafter referred to as Claimant, was at the time he was cited for an alleged falsification of his application for employment with the Indianapolis Union Railway, hereinafter referred to as Carrier, the duly elected General Chairman of The Order of Railroad Telegraphers on this property.

The material relevant facts, as reflected by the record, are as follows:

On or about August 4, 1953, Claimant made application for employment with the Carrier. On August 24, 1953, Claimant, for reasons not disclosed in the record, tendered his resignation.

On March 11, 1955, Claimant called at the Superintendent's office at Indianapolis, Indiana, seeking employment. On entering the office, he encountered Trainmaster L. F. McGrath, with whom he had become acquainted at the time of his first association with the Carrier. During the ensuing conversation with Mr. McGrath, the subject of his reemployment arose, whereupon the Trainmaster informed the Claimant that Carrier had need for a telephone operator.

During the subsequent conversation with Trainmaster McGrath, Superintendent McKitrick entered the office and, upon recognizing Claimant be-

After Mr. Isaacs failed to get a statement from Mr. McGrath, Mr. Joslin wrote to Mr. Isaacs on September 11, 1963, confirming telephone conversations regarding Mr. L. F. McGrath, retired Superintendent, and Mr. C. L. Golay, retired Trainmaster. (Copy attached as Exhibit F.)

Mr. Joslin, Trainmaster, contacted Mr. L. F. McGrath concerning Mr. Isaacs' record and Mr. McGrath advised that he knew nothing of Mr. Isaacs' record. (Copy of certified affidavits of Mr. L. F. McGrath and Mr. C. L. Golay, attached as Exhibit G.)

POSITION OF CARRIER: The Carrier takes the position that Mr. Isaacs willfully falsified his application on March 11, 1955. Under the terms of the application for employment, any false statement made therein is sufficient cause for dismissal, regardless of when such false statement was discovered. The Carrier did not know of Mr. Isaacs' record until August 16, 1963.

The Carrier further takes the position that Mr. Isaacs was given a fair and impartial hearing and offered every opportunity to prove his claims that former Trainmaster Mr. L. F. McGrath and also former Assistant Trainmaster Mr. C. L. Golay, knew of his past record at the time he made application, on March 11, 1955.

The Organization appealed the dismissal to the Chief Operating Officer on the grounds that the investigating officer pre-judged the case and officials of The Indianapolis Union Railway Company had prior knowledge of Mr. Isaacs' past record. The investigation clearly speaks for itself, and as shown on Exhibit G, the officials did not have knowledge of Mr. Isaacs' record prior to August 16, 1963.

In accordance with the above, and as outlined on various exhibits, the Carrier certainly feels that your Board should deny the Organization's claim.

(Exhibits not reproduced.)

OPINION OF BOARD: On or about August 4, 1953, Claimant, D. E. Isaacs, signed an application for employment and was employed by the Carrier until August 24, 1953, when for undisclosed reasons he tendered his resignation, thus terminating his employment. On March 11, 1955, Claimant called at the Superintendent's office and sought employment. On that date he executed an application for employment, was hired and entered upon his duties for the Carrier. On July 10, 1956, Claimant resigned from Carrier's service, thus terminating his contract of employment, and thereafter accepted employment with the International Harvester Company, prior to December 11, 1956, the date of the commencement of Claimant's present service. Claimant contends that Trainmaster L. F. McGrath asked Claimant if he would be interested in coming back to work for the Carrier (this is not denied in the record, though Carrier offered a statement of McGrath's on another point); that in response to this request, Claimant called at the Trainmaster's office and re-entered Carrier's employment after notifying his former employer he was leaving that service. Claimant went to work at his present employment December 11, 1956, on an oral arrangement without being required to sign any application for employment. His seniority dates from December 11, 1956. Though on his personnel record there appears a notation that he was hired on the basis of his March 10, 1955, application, Claimant disclaims any knowledge of this, and contends that the subject of signing an application for employment was never discussed with him by any officer of the Carrier prior to December 11, 1956.

The application for employment that Claimant signed on March 11, 1955, contains the following:

"I hereby certify and warrant that I have carefully read the requirements of this application, that the information furnished is correct, and acknowledge that I fully and definitely understand that any false statement or misrepresentation herein will justify and cause my dismissal from the service regardless of when such fact may have been discovered by the Company or any of its Agents. I further understand and agree that my employment is temporary pending the approval or rejection of this application, also that if any statements made by me in this application should be untrue, the Company may treat my employment as temporary and conditional."

Claimant admits that on March 11, 1955, in response to the following question in the application for employment—"Have you ever been convicted of any criminal act, either misdemeanor, or felony?" he answered "No." He concedes that this was an untrue answer. He contends that he disclosed to Superintendent McKitrick that when he was 18 years of age, he had been convicted of a violation of the Dyer Act, a Federal Statute, for removing a stolen car from one state to another, and that he had been confined in a Federal correctional institution for a period of six months. He denied that it was his intention to deceive anyone. He further contends that after discussing this experience with the Superintendent and asking him how he, Isaacs, should answer the question, the Superintendent responded that it wouldn't affect his employment in any event and he could answer in any way he pleased, but to remember he wouldn't always be Superintendent. It must be conceded, of course, that Carrier has no way of refuting these statements, as Superintendent McKitrick died soon after Claimant's hiring.

That Carrier's officers had any knowledge of Claimant's past trouble, it must be admitted, would be most difficult to prove, but in the record we do have some admissions and evasive answers by witnesses called by the Carrier which would indicate that some of the officers of the Carrier had, at least, some knowledge of Claimant's trouble prior to the time this charge was preferred. Whether or not they did have such knowledge is relatively unimportant in view of the conclusion ultimately arrived at in this matter.

Our attention has been called to a line of awards which, it is alleged, have consistently held that an employe who falsifies his employment application, irrespective of the elapse of time between the date when the falsification was discovered, is subject to discharge. Award 5994, Jasper, which is followed in Award 11328, Dolnick, sets forth, quite explicitly, the following:

"By giving materially false information on his application of employment, the Claimant's employment was in substance obtained by fraudulent information, and the Carrier upon obtaining the correct information could dismiss the Claimant whether or not one month or eight years had passed. * * *

This case is not a matter of discipline, but the obtaining of employment by false information which gives the Carrier the right to deny employment to a man giving materially false information. We cannot consider whether or not the acts of the Carrier were arbitrary, capricious or unreasonable and an abuse of discretion. * * *

In all of the awards cited there had been but one contract of hiring and an application for employment signed by the employee. At the time Claimant was hired on December 11, 1956, had he signed an application for employment and answered it similarly to the one he signed on March 11, 1955, we might be inclined to follow these awards.

The contract of employment signed on March 11, 1955, was terminated on July 10, 1956. The contract of employment of December 11, 1956, was a new one, his seniority under the present contract commenced on that day. Prior to that time he had been asked by the Trainmaster, L. F. McGrath, whether or not he would be interested in coming back to work for the Carrier (though a statement was taken from McGrath as to his lack of knowledge of Claimant's "violation of the Dyer Act" there is no denial by him of Claimant's recital as to the circumstances under which he was hired on December 11, 1956). Claimant was again employed to work for the Carrier—it was a new contract. He signed no application for employment, made no representations to secure employment and denies that anything was said about his being hired on his March 11, 1955, application for prior employment, nor is there anything in the record indicating it was ever discussed.

The only evidence that was produced at the hearing by Carrier that Claimant's hiring on December 11, 1956, was based on his application for employment on March 11, 1955, was a notation on his personnel record that his present employment is based on the application he signed in March, 1955. This is at most merely a self-serving statement. The personnel record is under the control of the Carrier. There is nothing in the record indicating when this entry of violation was made, nor by whom it was made, nor under what circumstances it was entered.

We must, therefore, conclude from the foregoing that even though there is an admission in the record that Claimant answered untruthfully an application for employment on March 11, 1955, which might have justified a dismissal at any time under that contract, that that contract of employment was terminated on July 10, 1956. We must further find that Claimant was re-employed under a new oral contract of employment on December 11, 1956, that he made no representations of any kind, true or false, to secure employment, and has continued in the employment of Carrier under the contract entered into on December 11, 1956.

For the foregoing reasons, we find that the dismissal of the Claimant was without cause, arbitrary and capricious.

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 Employee involved in this dispute are respectively Carrier and Employee 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

The Claimant's dismissal was without cause, was arbitrary and capricious.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 31st day of July 1964.