

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22695
Docket Number CL-22743

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8665) that:

(1) The Carrier violated the rules of the effective Clerk-Telegrapher Agreement when, on December 23, 1977, it arbitrarily and unjustly dismissed Extra Clerk John F. Wickham, Jr., from service of the Carrier, and

(2) As a result thereof, John F. Wickham, Jr. shall now be reinstated to the service of the Carrier with seniority and all other rights unimpaired, and

(3) John F. Wickham, Jr. shall be compensated for any and all wage, hospitalization and other payment losses suffered as the result of his improper dismissal from Carrier's service.

OPINION OF BOARD: The record shows that claimant was employed on February 3, 1975. On December 23, 1977, after a formal investigation conducted on December 9, 1977, claimant was notified of his dismissal from service for falsifying his application for employment, which he had filled out on January 31, 1975.

Rule 54 of the applicable Agreement provides:

"RULE 54

Application for Employment.

The applications of new employees shall be approved or disapproved within ninety (90) days after the applicant begins work, unless a longer time is mutually agreed to by the Management and the representative of the employees.

"In the event it later develops the application contains false information, it shall not be considered as having been approved, provided the Management handles further under Rule 47 within thirty (30) days from date such falsification came to their attention."

Rule 47, referred to in Rule 54, is the applicable Discipline Rule.

The Organization contends that the Carrier did not comply with the thirty-day provision of Rule 54. The Carrier contends that it did comply with the thirty-day provision as it did not obtain medical records from hospitals indicating that claimant may have misrepresented facts on his application for employment until November 4, 1977; that claimant was given notice on December 1, 1977, to attend investigation on December 2, 1977, on the charge of giving false information in answer to certain designated questions on Placement Health Questionnaire and also false information in answers to certain designated questions on his job Application Form. At the request of the claimant, the investigation scheduled for December 2, 1977, was rescheduled and set for 9:00 A.M., December 9, 1977.

The Organization contends that Carrier became aware of claimant's possible misrepresentation on his application for employment forms when a deposition was taken from claimant by Carrier's attorneys on July 27, 1977, in connection with a personal injury suit. The Organization also contends that the case was prejudged because of a letter written by Carrier's attorney on November 22, 1977.

In the investigation conducted on December 9, 1977, a transcript of which has been made a part of the record, claimant was represented by the Vice General Chairman of the Organization. We have carefully reviewed the transcript, and at no time prior to or during the investigation was any question raised by claimant or his representative as to the timeliness of the charge or the investigation, nor was the so-called prejudgment issue raised.

It is well settled by case law of this Board that if objections are to be taken to the charge, the timeliness of the investigation, or the manner in which the investigation is conducted, such objections must be raised prior to or during the course of the investigation or they are considered to have been waived. See

Award 22456 and the other awards cited therein. It was not until appeal, following claimant's dismissal, that the timeliness issue was raised, which was too late.

The record also shows that the medical evidence obtained by the Carrier on November 4, 1977, was much more extensive than the information contained in claimant's deposition, taken on July 27, 1977.

The investigation contained substantial evidence, including claimant's admissions, that claimant had given false answers to certain questions on his Application for Employment and on the Placement Health Questionnaire. This Board has, on numerous occasions, upheld the dismissal of employees for falsification of employment applications.

Based upon the record before us, the Board finds no proper basis for interfering with 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:


Executive Secretary

Dated at Chicago, Illinois, this 11th day of January 1980.