

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22964

Docket Number CL-22954

Rodney E. Dennis, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-8798)  
that:

(1) Carrier violated the Agreement between the Parties when, on May 19, 1978, it notified Employee Diane M. Smith that her employment application had not been approved, thereby terminating her employment as of that date, and

(2) Because of such action, Carrier shall now be required to return Mrs. Diane M. Smith to service with all rights unimpaired and compensate her for all wage losses sustained from May 19, 1978, and continuing until the matter is corrected.

OPINION OF BOARD: Claimant, Diane M. Smith, was an extra clerk at Carrier's Barr Yard facility in Riverdale, Illinois. She had a seniority date of October 10, 1977. On May 19, 1978, she was dismissed from service for allegedly falsifying her employment application.

Claimant contends that while walking in the yard on March 15, 1978, she was overcome by fumes. She fainted, bumping her head. Upon recovery, she refused medical attention. At a later date, she approached the company's claim department and requested a settlement, contending that she had been injured. The medical department kept her out of service, effective April 7, 1978, in order to perform medical examinations and conduct other investigations.

In the process of this investigation, Carrier learned that claimant had been involved in a personal injury claim against an insurance company on a previous occasion, prior to working for Carrier. This information was received by Carrier on May 1, 1978.

On May 17, 1978, a hearing was held to ascertain whether claimant had falsified her employment application when she applied for work with Carrier in 1977. The hearing officer concluded that claimant had failed to indicate on her employment application that she had brought a personal

damage claim in 1974. This failure to mention this claim on the employment application constitutes falsification of the application.

Rule 54 of the schedule agreement states that if, after an employee has begun work, it comes to light that there has been a falsification on his or her application, the Carrier may bring charges within 30 days of learning of that falsification.

The record of this case clearly established that claimant was involved in a personal injury claim that was not reported on her employment application submitted to Carrier. Carrier first learned of this incident on May 1, 1978. After a review of claimant's employment application, Carrier discovered the omission. Charges were brought and a hearing was held on May 17, 1978. Claimant was subsequently separated from service on May 19, 1978. This procedure took place well within the 30 day-limit stipulated in Article 54 and the procedures of Article 47. The Union's argument to the contrary is not persuasive in face of the record.

Review of the record of this case reveals that claimant did, in fact, withhold information about a prior claim from Carrier when she failed to answer properly Question 56 on the employment application. Rule 54 gives the company the authority to withdraw approval of an employment application under such circumstances. This Board can see no reason why it should not support the actions of Carrier in this case.

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.

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The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: *A.W. Pauls*  
Executive Secretary

Dated at Chicago, Illinois, this 28th day of August 1980.