

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23827  
Docket Number MS-23948

Paul C. Carter, Referee

PARTIES TO DISPUTE: { John E. Griffin  
                              { Consolidated Rail Corporation

STATEMENT OF CLAIM: "Whether the carrier, Consolidated Rail Corporation, discharged the petitioner, Mr. John E. Griffin of Hudson, New York, from his employment as an iron worker improperly and unfairly, and in violation of Article XI, Section 2, of the Mediation Agreement dated October 30, 1978, by and between the Brotherhood of Maintenance of Way Employees and certain carriers, including Conrail; the date of the said discharge from employment was December 7, 1978, Mr. Griffin having been headquartered at Poughkeepsie, New York."

OPINION OF BOARD: The record shows that Claimant entered the service of the Carrier on June 9, 1976, as an Ironworker in Carrier's Bridge and Building Department.

On November 16, 1978, Claimant was sent, via certified mail, a notice informing him to attend a hearing on November 21, 1978, in connection with the charge:

"Falsification of employment application dated June 8, 1976, wherein you answered negatively the question. 'Have you ever been convicted?'"

The hearing was conducted as scheduled. Claimant was present throughout the hearing and was represented. It was developed in the hearing and Claimant admitted to answering "No" to the question: "Have you ever been convicted?" In the hearing a copy of Claimant's conviction record was introduced by Carrier's Sergeant of Police, which showed five convictions between September 24, 1957, and December 6, 1974, two for larceny. The Claimant took no exception to the conviction record and agreed that he did falsify his application for employment.

In the hearing, Claimant's attention was called to that part of the application form which reads:

"I further understand that the furnishing of false or incomplete information in connection with my application for employment is good cause for rejection or dismissal from service."

Many awards of this Board have held that employees who falsify applications for employment are subject to discharge, regardless of the time lapse between the date of the application and the date of discovery. See Awards 11328, 14274, 18103 and 20225.

The Carrier contends that in the handling of the dispute on the property no contention was made in the appeal procedure concerning Article XI, Section 2, of the Mediation Agreement of October 30, 1978, and, therefore, should not properly be considered by the Board. It is true that the issue was not raised in the appeal on the property; however, in the investigation Claimant's representative did make reference to such agreement. However, the Agreement referred to contains the language:

"... unless the information involved was of such a nature that the employee would not have been hired if the Carrier had had timely knowledge of it."

The Carrier states that Claimant would not have been hired had it been informed of his conviction record.

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: Acting Executive Secretary  
National Railroad Adjustment Board

By

  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 26th day of March 1982.

