

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24121
Docket Number MW-24186

Edward L. Suntrup, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employees
{ Seaboard Coast Line Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The dismissal of Trackman B. R. Holden for alleged violation of 'General Rule 18' was without just and sufficient cause (System File C-4(13)-BRH/12-39(80-23) H).

(2) The claimant shall be reinstated with seniority and all other rights unimpaired, his record be cleared and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant entered service of the Carrier as a trackman on August 7, 1978. On January 10, 1980 Claimant received notice to attend an investigation on January 15, 1980 to determine whether he had violated a portion of General Rule 18 of the Safety Rules Book for Engineering and Maintenance of Way Employees. Rule 18 reads, in pertinent part:

"... dishonesty ... (or) ... making false statements ... will subject the offender to dismissal."

Specifically, a routine investigation by Carrier after Claimant had sustained a back injury while installing crossties on March 6, 1979 led Carrier to charge that Claimant made a false statement, as this related to prior back injuries, on his employment application. On January 25, 1980 Claimant was notified by Carrier that he had been found guilty as charged and that he was being dismissed from service.

A review of the hearing transcript and supporting evidence shows that Claimant did have back injury problems prior to his employment with the Carrier and that he did, in fact, conceal this on his employment application. There is, indisputably, sufficient substantial evidence to indicate that the Claimant is guilty as charged. The Board also notes that irrespective of whether Claimant thought this information related to his prior medical history was important to the Carrier or not, Carrier did have a right to know about Claimant's prior medical problems in order to both protect itself from potential liability and (given the nature of the job of trackman) to protect Claimant himself from potential injury. Indeed, this is the spirit of the following Article which is found in the parties' National Agreement of October 30, 1978. This Article reads:

"An employee who has been accepted for employment in accordance with Section 1 will not be terminated or disciplined by the Carrier for furnishing incorrect information in connection with an application for

employment or for withholding information therefrom 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."

It was observed by Carrier's Director of Labor Relations in response to Organization's appeal on property that upon review of Claimant's actual medical background Carrier's Chief Medical Officer advised that he would not have approved Claimant for employment as a trackman in the first place. In this instance, the Board has no reason to denigrate this professional opinion as Organization suggests it should be in its ex parte submission.

The National Railroad Adjustment Board has a lengthy tradition whereby it has held a firm position on the severity of falsifying employment applications (See First Division Award 21979; Second Division Awards 1931 and 5959 inter alia); in the present case, the Board sees no imperative to diverge from this tradition and it will not disturb Carrier's position on this matter.

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

That the Agreement was not violated.

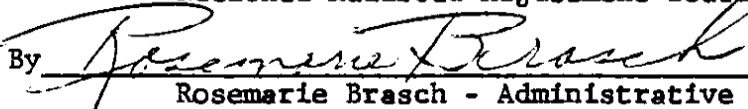
A W A R D

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 14th day of January 1983.