

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32992
Docket No. MS-34146
98-3-97-3-690**

The Third Division consisted of the regular members and in addition Referee Robert Perkovich when award was rendered.

**(Vannie Lee Williams
PARTIES TO DISPUTE: (
(Norfolk Southern Railway Company**

STATEMENT OF CLAIM:

"The wrongful dismissal of Vannie Lee Williams by Norfolk Southern Railway Company. The Carrier asserts that Mr. Williams provided a materially false employment application at the time of his hire on or about February 28, 1996. Mr. Williams was subsequently discharged, and pursued intra-carrier administrative remedies which did not satisfactorily resolve the dispute. The factual issue involves Mr. Williams' answer to the questions of whether he had ever been employed by Norfolk Southern, to which he answered in the negative. Mr. Williams had worked for Southern Railway, approximately seventeen years prior to his hiring by Norfolk Southern. Mr. Williams did not believe that Southern Railway was the same as Norfolk Southern, and did not believe that he was supposed to go back that far in his employment history. Even if Norfolk (sic) Southern is considered the same as Southern, the reasons for Mr. Williams' leaving Southern's employment would not have precluded his hiring by Norfolk Southern. Accordingly, Mr. Williams requests reinstatement, without loss of seniority and with full back pay and any other benefits to which he may be entitled and expenses to which he should be reimbursed."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

Between 1977 and 1979 Claimant was employed by the Southern Railway. His employment with that entity ended when he was dismissed for failing to protect his assignment. Subsequently, between 1979 and 1996 the Claimant was employed elsewhere until he applied for employment with the Carrier on February 28, 1996. On his employment application the Claimant was asked whether he had "... been employed by (Carrier) or any of its subsidiaries" to which he replied negatively. However, in 1994 the Southern Railway was bought out or merged with the Carrier. Moreover, the application contained a clause providing that any "untrue or misleading statements" or the failure to include "material" information would be grounds for termination. After Carrier hired Claimant it discovered his prior employment with Southern Railway and dismissed him for falsifying his application.

This case cannot be decided on its merits. The appeal is procedurally defective because Claimant's attorney is not his duly authorized representative as designated by the governing collective bargaining Agreement and the Railway Labor Act. Assuming arguendo that the claim was properly before us however, we would still deny it. Although the Claimant argues that he did not appreciate the nuances of corporate acquisitions, we do not agree. There is no question that he completed the portion of the application calling for his prior employment up to the point of his employment with Southern Railway. This prior employment would have been of benefit to him, but for the reasons for his separation. Thus, the inescapable inference is that he knew the consequences of including that entry on the application and chose not to do so. Such conduct merits dismissal and we so find.

AWARD

Claim denied.

Form 1
Page 3

Award No. 32992
Docket No. MS-34146
98-3-97-3-690

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 23rd day of December 1998.