

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33591
Docket No. MS-32865
99-3-96-3-153**

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

(Edward Green
PARTIES TO DISPUTE: (
(New Jersey Transit Rail Operations, Inc.

STATEMENT OF CLAIM:

“Restoration to service following dismissal on account of failure to disclose details of back injury on pre-employment application.”

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.

Claimant was dismissed by letter dated August 30, 1995 for failure to timely report an injury and for failure to disclose on his pre-employment application that he had a previous injury as a result of an automobile accident in 1990.

Claimant took a pre-employment physical with the Carrier on March 6, 1995. On the medical questionnaire, Claimant checked “no” to the question of “Have you ever been treated for, do you have, or have you ever had any of the following? . . . Back Trouble, Disc or Injury.” On that document, Claimant certified that his responses were true. The certification further stated that “. . . any misrepresentation or omission of

material fact will be sufficient cause for my dismissal from the Company's service if I am employed."

Claimant was employed effective March 13, 1995. After Claimant reported job related injuries sustained in July and August 1995, examination of Claimant demonstrated that he had a previous back injury resulting from an automobile accident that was not reported on his pre-employment medical screening.

At the Hearing, Claimant testified:

MR. HARRIGAN: Well, let me ask you directly. Did you sustain an injury, to your back, in an automobile accident, in 1990?

MR. GREEN: Yes I did.

MR. HARRIGAN: And what was the consequences of that automobile accident?

MR. GREEN: I was treated by a doctor.

Substantial evidence supports the Carrier's determination that Claimant failed to disclose on his pre-employment application that he had a previous injury as a result of an automobile accident in 1990. In the above-quoted testimony, Claimant admitted to that failure to disclose.

With respect to the amount of discipline imposed, the medical questionnaire specified the consequences of failure to make such a disclosure — ". . . any misrepresentation or omission of material fact will be sufficient cause for my dismissal from the Company's service if I am employed." Dismissal was therefore not arbitrary.

AWARD

Claim denied.

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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 16th day of November 1999.