

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1357

Heard at Montreal Wednesday, May 15, 1985

Concerning

CANADIAN NATIONAL RAILWAY COMPANY
(CN Rail Division)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Dismissal of Flagging Foreman Wesley Martinuik effective 28 May 1984.

JOINT STATEMENT OF ISSUE:

Mr. Martinuik first entered the Company's service as a Temporary Stores Attendant on 30 January 1978. He worked in various classifications in the Company's Express Department and was discharged for the accumulation of demerits in excess of 60 effective 13 January 1983.

Mr. Martinuik was rehired on 7 May 1984 as a Flagging Foreman. It was later discovered that Mr. Martinuik had previous service with the Company.

A review of the unsigned Application for Employment Form revealed that there was an "x" in the square which indicates that the applicant had never worked for the Company before.

Effective 28 May 1984 the Company advised the grievor that it considered him undesirable for its service and he was therefore dismissed.

The Union contends that the grievor did not mark the "x" on the Application for Employment Form and that there was no cause for the Company to dismiss Mr. Martinuik.

The Company denies the Union's contention.

FOR THE BROTHERHOOD:

(SGD.) G. SCHNEIDER
System Federation General
Chairman

FOR THE COMPANY:

(SGD.) J. R. GILMAN
FOR: Assistant
Vice-President
Labour Relations

There appeared on behalf of the Company:

T. D. Ferens	- Manager Labour Relations, CNR, Montreal
J. Russell	- Labour Relations Officer, CNR, Montreal
M. Menard	- Employee Relations Officer, CNR, Montreal

And on behalf of the Brotherhood:

G. Schneider	- System Federation General Chairman, BMW, Winnipeg
T. J. Jasson	- Federation General Chairman, BMW, Winnipeg
R. Y. Gaudreau	- Vice-President, BMW, Ottawa

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AWARD OF THE ARBITRATOR

The grievor, Flagging Foreman Wesley Martinuik, was terminated during his probationary period for falsification of his application for employment form.

The evidence indicated that effective January 13, 1983, the grievor had been terminated from CN Express for his having accumulated 60 demerit marks.

On May 7, 1984, the grievor was hired to the Flagging Foreman's position by CN Rail. The grievor did not sign his name on his application for employment form. He also left blank "The Employment History" portion of the application. That is to say, the grievor did not insert in the appropriate column his employment history with CN Express or "The reasons for leaving". Moreover, an "x" appeared to have been inserted in the "no" box in answer to the question, "have you worked for CN before". The grievor denied that he had placed the "x" in the box as shown on the application form.

The trade union insisted that the grievor did not fill in the Employment History column because he had advised the attending Clerk that he had previously worked for the company. The Clerk apparently is alleged to have advised the grievor that it was unnecessary for him to complete (or sign) the application for employment form. The grievor is said to have furnished the Clerk with his previous employment number with a view to her retrieving his previous application for employment form.

It is important to note that a warning is contained on the application for employment form advising applicants for employment that dismissal might result after hire "for false and misleading statements or important omissions".

At no time prior to the grievor's date of hire did he disclose his previous employment history with the company or that the reason for his leaving was due to his termination for cause. The grievor's overall scheme was clearly to deceive the company and, more particularly the Clerk who attended upon him while he filled out the application for employment form, into hiring him without disclosure of his previous employment history. The application for employment form anticipates three situations that might well result in an employee's termination after hire for reasons relating to deficiencies in information on the application for employment form.

They are false and/or misleading statements and important omissions. The grievor, it might arguably be said, offended each of those prohibitions.

But in most part his efforts to conceal his past employment history pertained predominantly to his making "important omissions" inclusive of his failure to sign the application form. If I were compelled to make a finding (which I am not) I would most likely also conclude that the grievor misled the company by his insertion of an "x" in the box indicating that he had no previous employment history with CN. It suffices to say that the grievor's strategy was improper and thereby was met with an appropriate company response for his deceit.

The grievance is therefore rejected.

DAVID H. KATES,
ARBITRATOR.