

PUBLIC LAW BOARD NO. 1760

Award No. 10

Docket No. MW-MOR-75 24

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute Norfolk and Western Railway Company

Statement

of Claim: Carrier violated the effective Agreement by dismissing laborer Larry Williams, November 6, 1975 on unjust and unproven charges and failing to hold a fair and impartial hearing. Claimant Larry Williams shall be reinstated immediately and paid for all time held out of service.

Findings: The Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated February 2, 1976, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

Claimant laborer after filling out an employment application in July 1975 was hired on August 4, 1975. He was off three weeks in late September and early October 1975 with swelling of the knee. Claimant was sent a notice of investigation, on October 13, 1975, in pertinent part, reading:

"....to determine your responsibility in connection with falsification of your application for employment, Form PER-100,in that you answered "no" to the question....
"Have you ever had: knee injuries, disorders or treatment
....."

As a result of the investigation held, on October 29, 1975 in connection with this charge, Carrier concluded Claimant guilty as charged. He was dismissed from service, effective November 6, 1975.


It is clear from the record established that Claimant had a knee disorder before applying for employment. The evidence offered by Claimant discloses that he had, at least, two prior instances of disorder of the knees. One instance occurred five years ago (1970) and the other, three years ago (1972), preceding the then current hospitalization, October 1975, for a knee disorder. While Claimant might have thought he was acting in good faith his medical record speaks to the contrary. Claimant's interpretation of his medical history and his wilful withholding of such important medical information from a prospective employer was deceitful. The fraudulent representation causes his contract of employment to be nullified. In this connection see First Division Award 15570, Second Division 1934, Third Division Awards 20225 and 18103 among others.

The Board finds that Claimant was accorded due process, that there was sufficient competent evidence to support Carrier's conclusion and that Claimant falsified his employment application. The discipline assessed was neither unreasonable nor arbitrary. This claim will be declined.

Award: Claim denied.


M. A. Christie, Employee Member


G. C. Edwards, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member