

PUBLIC LAW BOARD NO. 1760

Award No. 6

Case No. 6

File No. MW-DEC-75-21

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute Norfolk and Western Railway Company  
(Former Wabash Railroad)

Statement of Claim: 1. Carrier violated the effective Agreement when it discharge Laborer James D. Hunter from the services of the Norfolk and Western Railway Company, on March 7, 1975, unfailry in violation of Rule 20.

2. Carrier is guilty of unfair labor practices.

3. Carrier shall now reinstate Laborer James D. Hunter to his former position and he shall be paid for all time lost.

Findings: The Board finds, after hearing upon the whole record and all evidence, 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 hearings held.

Claimant Laborer was hired May 17, 1973 by Carrier. Prior thereto he had been employed by a construction company. Claimant was dismissed by his Division Engineer, on March 7, 1975, due to falsifying his application for employment April 17, 1973. Claimant requested formal hearing which was held April 4, 1975.

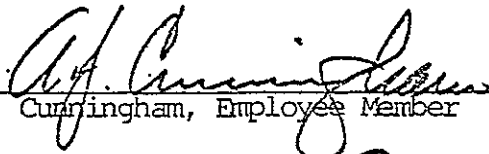
As a result thereof such dismissal was sustained. Claimant was accorded due process and ably represented. The record contains sufficient evidence to support the conclusion that Claimant did, in fact, falsify his application for employment dated April 17, 1973. He did, in fact, materially misrepresent an injury received while employed with a former employer aswell as a personal injury claim susbsequently filed against that Company. Said employment application contains the following statement above the applicant's signature line:

"I hereby certify that the answers in this application are true and complete. I understand that any falsification, misrepresentation, or significant omission will constitute just cause for dismissal regardless of when discovered."

All Divisions of the NRAB have consistently followed the doctrine that obtaining employment under false pretenses is grounds for dismissal and that such a contract of employment is voidable because such applicant deliberately misled the Carrier by withholding vital information necessary to permit Carrier's proper and full determination of whether it should hire such applicant.

In the circumstances, we are constrained to deny this claim.

Award: Claim denied.

  
A. J. Cunningham, Employee Member

  
G. C. Edwards, Carrier Member

  
Arthur T. Van Wart, Chairman  
and Neutral Member

Issued at Atlanta, Georgia, May 25, 1977.