

PUBLIC LAW BOARD NO. 1760

Award No. 63

Case No. 63

Carrier File MW-MOB-83-21

Parties Brotherhood of Maintenance of Way Employes

to and

Dispute Norfolk and Western Railway Company (Former Wabash)

Statement

of Claim: 1. Carrier violated the effective Agreement when Laborer R. M. Hodge was unjustly dismissed from service in letter dated June 29, 1984.

2. Claimant Hodge shall be reinstated to his former position with all rights unimpaired and be paid at the respective rate of laborers commencing June 30, 1984, plus any additional overtime that his particular gang worked, until he is returned to 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 was employed as a Laborer on or about April 15, 1982. He was notified following a formal investigation, by the Trainmaster under date of June 29, 1984:

"As the result of the findings brought forth at the formal investigation held at Moberly, Mo. on June 12, 1984, to determine your responsibility in connection with your falsification of your Norfolk and Western Railway Company application for employment, signed by you and dated April 2, 1982, in that you checked a box marked 'No' as an answer to the question, 'have you ever been convicted of a criminal offense (other than minor traffic violation?)' when, in fact, you pleaded guilty to a charge of burglary for the theft of a car radio in Cook County Court, Chicago, Illinois, and were

assessed probation in May 1980, you are hereby dismissed from all services of the Norfolk and Western Railway Company."

As pointed out to the Claimant, who appeared at the investigation, the function of this Board is to determine whether or not Claimant was accorded the due process to which entitled under his discipline rule, whether there was sufficient evidence adduced to support the conclusions reached by Carrier as to Claimant's culpability of the charge placed against him and in that connection not to determine whether had it been the original trier of fact that it would have reached the same or different conclusion, and last to determine whether or not the discipline, in light of the offense and his service record, was unreasonable.

There are no procedural deficiencies to deter the review of the case on its merits.

The record reflects that as a result of an investigation held in connection with the theft of Claimant's automobile from the property, Carrier discovered that Claimant had been convicted of a crime of burglary in the state of Illinois. That fact caused a review of Claimant's employment application, dated June 19, 1978. It was noted therein that he filed "no" to the question "Have you ever been convicted of a criminal offense other than a minor traffic violation." Claimant was thereafter interviewed by Carrier's police. He gave a statement on May 29, 1984, reading:

"I was arrested by the Lansing, Illinois Police Department, for theft of a car radio. This about April 1980. I was charged with burglary for the theft of the radio and pled guilty to the charge, a felony, in Cook County Court, Chicago, Illinois. After pleading guilty, I was given 2 1/2 years probation in May 1980. I hired out on the railroad in April 1982 and was still on probation when I was hired by the railroad. This statement is the truth and given of my own free will. This statement written by RC Stock at my request. I have not been in trouble since that time.
S/S Ronald M. Hodge

Witness: R. C. Stock, Lt. Police
C. F. Gillispie, Division Chief of Police"

Claimant in question and answer No. 240 pled guilty to the charge against him. Thus, having pled guilty there is nothing left for the Board to review except the degree of discipline assessed.

This Board, in several of its awards among which were Nos. 6, 10 and 36, as have awards of other boards of adjustment including the National Railroad Adjustment Board, held that materially false representation of statements in employment applications mislead the employer and when the nature thereof is such to void giving the Carrier the right to deny employment then dismissal therefor was not unreasonable. Second Division Award 1934 (Judge Mortimer Stone) held:

"Carrier has the right and duty to use care in its selection of employees, protect the public, its other employees and itself. In order so to do it may make inquiry as to any pertinent record of the applicant. It must be concerned with his physical, moral and mental fitness for the work..."

In the circumstances, this Board is without authority to grant leniency. That is a matter which is solely within the jurisdiction of the Carrier. In the particular circumstances, this claim will be denied instead of dismissal.

Award: Claim denied.


M. A. Christie, Employee Member


J. A. Abbateello, Jr., Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued December 8, 1985.