

Award No. 12
Case No. 12

Public Law Board No. 2203

PARTIES
TO
DISPUTE:

Brotherhood of Maintenance of Way Employees
and
Consolidated Rail Corporation

STATEMENT
OF
CLAIM:

1. Carrier violated Rules 5-A-1 and 5-E-1 when it dismissed Trackman Gary D. Clifford.
2. Claimant's record be cleared and he be restored to service with all rights unimpaired and paid for time lost.

FINDINGS:

On July 17, 1974, claimant answered "No" to the following question on the Pre-Employment Medical Examination Form:

"Have you ever had or do you now have....
back trouble, lumbago or sciatica?"

He signed the form which included a certification that his answers were truthful and that "False information may be sufficient cause for dismissal."

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Claimant began to work for Carrier on July 17, 1974. He continued in its employ until September 20, 1977, when he was dismissed for falsification of the aforementioned application.

The discipline is based on evidence that during a physical examination on November 8, 1976, claimant informed a Dr. Richard Rak that he had experienced back trouble after an automobile accident in 1969 and saw a physician about it in 1972 "and his back pain resolved."

This is some evidence of back trouble in 1972. It would have been more candid of claimant to have mentioned it in the Pre-employment Medical Report. However, he did clearly state in that Report of July 17, 1974, that he had been involved in an auto accident in 1969 which caused chest muscle difficulty. Put on notice as to that accident, it would have been only reasonable for Carrier physicians to have at least looked into the possibility of a back injury. Claimant testified that the injury sustained as a result of the accident was to the muscles of his chest and that the back pain was not really serious. He points out that he passed Army physicals when going into and out of the service in 1972 and 1974.

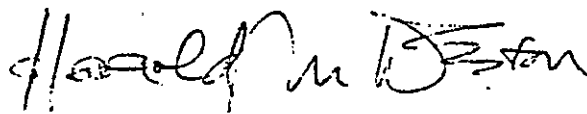
We will not set aside Carrier's conclusion that substantial discipline is warranted. However, dismissal is excessive disciplinary action in the light of this record. Claimant will be

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reinstated with seniority rights unimpaired but without back pay.

AWARD: Claimant to be reinstated promptly but without back pay.

Adopted at Philadelphia, Pa., May 17, 1979.



Harold M. Weston, Chairman



Carrier Member



Employee Member