

Award No. 6
Case No. 6

Public Law Board No. 2203

PARTIES
TO
DISPUTE:

Brotherhood of Maintenance of Way Employees
and
Consolidated Rail Corporation

STATEMENT
OF
CLAIM:

"Dismissal case of L. L. Barnett, Trackman."

FINDINGS:

Just before claimant entered Carrier's service, he first filled out an application for employment on September 4, 1975, in which he answered "No" to the question as to whether he had ever sustained a personal injury other than minor cuts or bruises. He signed the application and certified therein that he had correctly answered all questions.

Investigation subsequently disclosed that the reply was false. Claimant was charged on June 2, 1977 with falsification of the application and was accorded a hearing on June 13.

At the hearing claimant was ably represented and raised no objection to the adequacy of the charges and notice of

hearing or any other procedural matter. He simply pleaded guilty and asked for leniency.

He subsequently was dismissed because of falsification of the application. He appealed and again asked for leniency. In processing his appeal, he alleged that Assistant Division Engineer Halloway had told him on June 6, 1977 that his job would be preserved if he pleaded guilty and requested leniency. Mr. Halloway denied the allegation and the evidence is not sufficient, in the face of that denial, to prove that the suggestion was in fact made.

We do not agree with Award 103 of Special Board of Adjustment No. 589 that a plea for leniency necessarily removes the case from the authority of the Board. There is no sound ground for applying the principle so rigidly as the Award 103 line of cases prescribes. Whether or not a Board such as ours should resolve a dispute where a leniency plea has been entered should be decided on a case to case basis. The Board has jurisdiction over the dispute. The real question is whether it should exercise it.

Nevertheless, no convincing reason has been advanced for setting aside claimant's dismissal. A representation that no injury has been sustained is indeed material in view of the physically exacting nature of claimant's work and Carrier's potential liability.

While Carrier did not file charges until almost two years after the misrepresentation, the matter of laches is an affirmative defense which has not been established by evidence in

this case. There is no indication that Carrier should reasonably have been aware of the falsification at an earlier date.

AWARD: Claim denied.

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



Harold M. Weston, Chairman



Carrier Member



Employee Member