

PUBLIC LAW BOARD NO. 2774

Award No. 10
Case No. 16

PARTIES
TO
DISPUTE

Brotherhood of Maintenance of Way Employees
and
The Atchison, Topeka & Santa Fe Railway Company

STATEMENT
OF CLAIM

- "1. That the Carrier violated the Agreement between The Brotherhood of Maintenance of Way Employees and The Atchison, Topeka & Santa Fe Railway Company when they dismissed J.J. Rodriguez from service May 16, 1980, said dismissal being arbitrary, capricious and in abuse of discretion.
2. That the Carrier now reinstate Mr. J.J. Rodriguez to service with seniority, vacation, all benefit rights unimpaired, pay for all wage loss and/or otherwise made whole from May 16, 1980 forward until date of reinstatement."

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

The record indicates that Claimant had been hired on April 27, 1978 (the second stint with the Carrier) and was terminated by Carrier on May 16, 1980 following an investigation. Claimant's dismissal and investigation were based on his alleged misrepresenting facts when filling out his employment application in April of 1978.

At the hearing and without contradiction it appears that Claimant knowingly misrepresented facts with respect to his past conviction record on his employment application. The transcript of the investigation reveals that Claimant had been convicted on numerous occasions of crimes including driving while under the influence of alcohol, drunk and disorderly conduct and so on. He was also convicted of stealing \$200 from a store which event (the conviction) occurred a month prior to his employment application.

There is no question but that Carrier has the right to terminate employees who have

falsified applications except under one circumstance: if the Carrier had already had timely knowledge of the event and he would have been hired in any event with that knowledge. There is no evidence in this dispute that Carrier would have hired Claimant had it known of his prior conviction record. Petitioner's defense that the convictions were for minor or petty crimes is not persuasive. The fact of the matter is that Claimant had a serious drinking problem which triggered many of the incidents involving his prior convictions. There is no evidence to indicate that Carrier would have hired Claimant had it known of his problems prior to the decision on hiring him. Since there are no mitigating circumstances herein and there was clearly falsification of employment records, Carrier was within its rights in deciding to terminate Claimant.

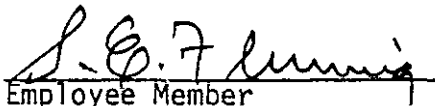
The claim must be denied.

AWARD

Claim denied.



I.M. Lieberman, Neutral-Chairman


Employee Member
Carrier Member

Chicago, IL, 1981