

Award No. 14
Case No. 21

STATEMENT
OF CLAIM

- "1. That the dismissal of Plains Division Trackman R.T. Ballin was unjust.
2. That Claimant, R.T. Ballin, be reinstated to service with seniority, vacation, all benefit rights unimpaired, pay for wage loss and/or otherwise made whole."

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 matter was brought to a head by the fact that an agent of Carrier was at the police station and discovered while finding that Claimant was jail for excessive drinking he had been arrested on numerous prior occasions for various alcohol and drug related misconduct. Four of those arrests occurred, as the investigation indicates, in 1976, 1977 and 1978 and involved such matters as resisting arrest, possession of marijuana and drink related problems. In the cases presented, in each instance, the Claimant had plead guilty to the charge and had received fines plus costs and in one instance, probation. Carrier points out that in Claimant's employment application, dated March

5, 1979 he indicated in the negative the response to the question as to whether he had ever been convicted of crime.

Article XI of the October 30, 1978 National Agreement provides in pertinent part as follows:

"Section (a) Probationary Period

Applications for employment will be rejected within sixty (60) calendar days after seniority date is established, or applicant shall be considered accepted. Applications rejected by the Carrier must be declined in writing to the applicant.

Section (b) Omission or Falsification of Information

An employee who has been accepted for employment in accordance with Section (a) will not be terminated or disciplined by the Carrier for furnishing incorrect information in connection with an application for employment or for withholding information therefrom unless the information involved was of such a nature that the employee would not have been hired if the Carrier had had timely knowledge of it."

The Board also notes that the application for employment includes a certification indicating that misrepresentation on the application is sufficient cause for discharge.

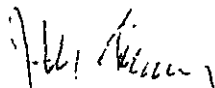
Petitioner argues that Carrier's certification rule has less weight and should not be considered in relation to both Article V of the Scheduled Agreement involving investigation and Article XI of the 1978 National Agreement (supra). In addition, Petitioner argues that the Carrier failed to prove that Claimant misrepresented information in his employment application. The latter point is elaborated by Petitioner in that the type of infractions which resulted in Claimant being arrested involved merely misdemeanors which Claimant did not feel, as a layman, were of a serious nature and had to be reported as crimes on the employment application.

The Board cannot accept the argument that the specific convictions which are acknowledged and are a matter of record, should have been ignored by Claimant with respect to his employment application. There is no doubt but that he had been jailed on a number

occassions for alcohol and drug related charges and had plead guilty in each instance (which the Board is aware of). The fines and probation as punishment for those infractions were clear and unequivocal. Whether the convictions were for misdemeanors or felonies is not relevant to the truthfulness of Claimant's response on the employment application. The Board is aware of no circumstances which would permit an employee to respond to the particular question making a distinction with respect to the type of crime involved. It is this Board's view that there can be no doubt but that the application was falsified since Claimant admittedly was convicted of a number of crimes (albeit misdemeanors) and Carrier had a right to have that information in making its determination as to whether or not to hire him. Under all the circumstances there can be no question but that the claim must be denied.

AWARD

Claim denied.



I.M. Lieberman, Neutral-Chairman



G.M. Garmon, Carrier Member



S.E. Fleming, Employee Member

January 1982
Chicago, IL