

PUBLIC LAW BOARD NO. 2774

PARTIES Brotherhood of Maintenance of Way Employees
TO
DISPUTE: and

The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM:

1. That the Carrier violated the current Agreement when it dismissed Welder Helper, W.T. Washington. Said action being excessive, unduly harsh and in abuse of discretion.
2. That the Carrier reinstate Claimant to his former Carrier position with seniority and all other rights restored, unimpaired, with pay for all loss of earnings suffered, and his record cleared of all charges.

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 Claimant was employed by Carrier on July 16, 1973. Subsequently, he was dismissed and ultimately returned to work by order of this Board on May 7, 1985 (Award No. 113). He has not re-established his seniority or worked since his original dismissal.

Carrier, by letter dated July 20, 1988, notified Claimant to attend an investigation, the purpose of which was to report alleged dishonesty on the part of Claimant, when he submitted his application for employment, originally. The letter indicated to him that the investigation would be held on July 26, 1988. On July 26, 1988,

Carrier, by certified letter, notified Claimant that the investigation had been postponed and rescheduled for August 8, 1988. The certified letter to Claimant was returned to Carrier by the Post Office marked "unclaimed." The hearing was held on August 8, 1988, and Claimant did not attend.

The record indicates that during the course of a suit filed against the Carrier for alleged injuries sustained by Claimant in the course of his employment (in 1981), it appeared that there were questions concerning his prior record, which emerged for the first time. An investigation developing from that lawsuit indicated that Claimant had failed to disclose, on his application for employment, the fact that he had previously been employed by Safeway Stores in Clovas, New Mexico from November, 1963 to April, 1971. In addition, the form indicated that he had been self-employed from April, 1967 to February, 1970. In addition to this falsification, the record also indicates that Claimant had not responded to that section of the employment application, which asked the question, "Have you any disabilities or limitations?" The record further indicates that during the time of his employment with Safeway Stores, he sustained nine on-duty injuries. In the course of a workman's compensation claim against Safeway Stores, because of one of those injuries, his physician testified that Claimant was physically unable to perform any work requiring heavy laboring, lifting, pushing or bending, which might put a strain on his back. In addition, the Claimant never reported the reason for his termination by Safeway Stores, which involved an allegation of dishonesty and misconduct arising from that dishonesty.

Petitioner's position in this matter essentially is on two grounds. First, it is alleged that Carrier was obligated to notify Claimant of the investigation in this matter, and there is no record that Claimant ever received notice of hearing. Thus, the organization argues that Claimant was deprived of his rights and due process

because of being unable to attend the proceedings. There was no evidence, as Petitioner views it, that Carrier made a reasonable effort to deliver the notice of hearing to Claimant. As a further position, Petitioner argues that there is no evidence submitted by Carrier in this case that it would not have hired Claimant had it been aware of the information which was omitted or not stated properly on his employment application. Petitioner argues that Carrier has not born its burden of proof in this regard.

Carrier takes the position that Claimant deliberately misled Carrier on his employment application and indeed falsified that application. Further, Carrier fulfilled its obligations to properly notify Claimant of the pendency and date of the hearing, and it was due to Petitioner's own failure to supply a correct address that he was not served with such notice, and it was returned by the Post Office.

The Board believes that the Carrier's conclusion in dismissing Claimant was appropriate under the circumstances. First, it is quite clear that Carrier did indeed do what was required under the rules to notify Claimant of the investigation which was to be held. The only requirement, in situations such as this, is that Claimant should have been mailed a notice to the last known address listed with Carrier. In this instance that was done to that address by certified mail (see, among other awards, Award No. 14 of Public Law Board No. 1582 holding to that effect). This Board believes, in accordance with the long history of such disputes in this industry, that the Carrier had met its responsibility to notify Claimant when it entrusts a letter to the U.S. Postal Service for delivery. In this instance it was done via certified mail, and therefore this contention of Petitioner must be rejected.

With respect to the merits involved in this matter, the Board is of the opinion that Carrier had every right to dismiss Claimant for falsification of his application. The fact that he deliberately, and it can only be construed in those terms, omitted information from his application concerning his previous employment, and in fact stated that he was self-employed during that time, was an egregious act on his part. No reasonable man can doubt that Carrier would not have employed this man had it known of his prior record with Safeway Stores, including his accidents and his medical record, as a result of one of those accidents, much less the reasons for his termination in that particular employment relationship. For the reasons indicated, therefore, this Claim must be denied.

AWARD

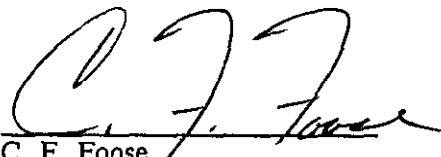
Claim denied.



I. M. Lieberman, Neutral-Chairman



L. L. Pope
Carrier Member



C. F. Foote
Employee Member

Chicago, Illinois
June 26, 1991