

PUBLIC LAW BOARD NO. 3241

In the Matter of:)	National Mediation Board
)	Administrator
)	
BROTHERHOOD OF MAINTENANCE OF)	
WAY EMPLOYES,)	
)	
Organization,)	
and)	
)	
UNION PACIFIC RAILROAD)	Case No. 47
COMPANY,)	Award No. 47
)	
Carrier.)	

Hearing Date: March 9, 1994
Hearing Location: Sacramento, California
Date of Award: March 2, 1995

MEMBERS OF THE BOARD

Employees' Member: C. F. Foose
Carrier Member: D. A. Ring
Neutral Member: John B. LaRocco

ORGANIZATION'S STATEMENT OF THE CLAIM

1. That the Carrier violated the current Agreement when it dismissed Track Laborer D. K. Purrington. 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. (Carrier File No. 910681.)

OPINION OF THE BOARD

This Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act as amended; that this Board has jurisdiction over the parties and the subject matter of the dispute herein; that this Board is duly constituted by an Agreement dated July 23, 1982; and that all parties were given due notice of the hearing held on this matter.

On May 10, 1990, Claimant, a 30 year old male, applied for employment with the Carrier. As part of the employment application process, Claimant answered questions concerning his medical history on Medical History Form No. 16901 as part of his pre-employment physical examination.

Two questions, Nos. 54 and 59, asked Claimant if he had a history of any physical, mental or emotional disabilities. Claimant answered negatively to both of these questions.

The Carrier subsequently hired Claimant as a Track Laborer and he entered service on June 14, 1990. During April and May of 1991, Claimant was assigned to Tie Gang No. 9065.

In late April and early May, 1991, Claimant sleepwalked in the outfit car during the night on, at least, two separate occasions. During these episodes, Claimant urinated on two sleeping workers and on the clothes of another employee.

The Track Maintenance Engineer learned that Claimant suffered from sleepwalking during the course of a formal investigation to determine if Claimant had violated Rule G. [See Award No. 46 of this Board.]

On June 6, 1991, the Carrier issued written notice charging Claimant with falsification of his employment application because he failed to indicate sleepwalking on the medical history form and more specifically, for allegedly falsely responding to questions on the form concerning disabilities.

At the investigation held on June 28, 1991, Claimant testified that he answered "No" to the questions on the medical history form because he had not walked in his sleep since he was a teenager. Claimant asserted that he forgot about his sleepwalking ailment.

Following the investigation, the Carrier dismissed Claimant from service.

This Board finds that the Carrier presented substantial evidence that Claimant falsified his employment application.

On the medical history portion of his employment application, Claimant completely misled the Carrier and the Carrier's physician concerning his disability, that is, sleepwalking. Even if Claimant had not had a sleepwalking episode in the last 10 years, such disability is not easily susceptible to forgetfulness. Claimant knew that he still suffered from the disability. Claimant did not bring forth any information showing that the disability had been cured or even treated. His only excuse was "I forgot" which is a flimsy and unacceptable explanation. Claimant had the intent to conceal the disability from the Carrier to procure employment as a Track Laborer.

Employees are obligated to disclose all prior existing injuries, maladies and disabilities on their employment application and failure to do so constitutes falsification of the application. *NRAB Third Division Award No. 25038 (Vaughn)*. Had the Carrier been aware of Claimant's sleepwalking problem at the time Claimant underwent the pre-employment physical examination, the Carrier would not have hired Claimant, at least, not into a Maintenance of Way position. The disability posed a safety and sanitation hazard to Claimant and his fellow workers. On the dates when he purportedly sleepwalked, Claimant was situated in an outfit car next to an active track. Claimant could have easily have stepped out of the car into the path of an oncoming train. In

addition, Claimant's inability to control urination while sleepwalking created a human health problem.

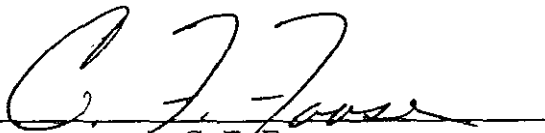
There is little that the Carrier could do to accommodate the disability. If the Carrier were to require Claimant to be strapped into bed, Claimant could not exit the outfit car quickly in the case of an emergency such as a fire. Also, such treatment could be viewed as inhumane.

Falsifying an employment application constitutes dishonesty. The penalty of discharge is commensurate with the gravity of the proven offense.

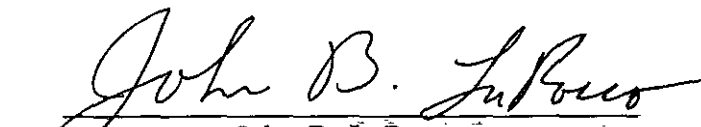
AWARD AND ORDER

Claim denied.

Dated: March 2, 1995


C. F. Foose
Employees' Member


D. A. Ring
Carrier Member


John B. LaRocco
Neutral Member