

PUBLIC LAW BOARD NUMBER 3445

Award Number: 39

Case Number: 39

PARTIES TO DISPUTE

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

AND

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM

Machine Helper Raymond A. Albright was dismissed from service on April 11, 1985 for alleged withholding and falsifying pertinent information on his pre-employment application and medical examination forms. Claim was filed by the Employees in accordance with Railway Labor Act and agreement provisions. Employees request reinstatement with back pay and all other rights unimpaired.

FINDINGS

Claimant, at the time of the dispute in question, was employed as a Machine Helper. By letter dated March 22, 1985, Claimant was notified to attend an investigation concerning charges that he falsified information on his pre-employment application filed with Carrier. An investigation was held on March 28, 1985. By letter dated April 11, 1985, Claimant was dismissed from service.

The issue to be decided in this dispute is whether Claimant was dismissed for just cause under the Agreement.

The position of the Organization is that Claimant was wrongfully dismissed by Carrier.

Initially, the Organization contends that Claimant's procedural rights were violated, in that Carrier failed to specify in the initial letter of charges as to what Claimant had allegedly falsified in his pre-application form, asserting that Claimant's rights were impermissibly affected, since he could not prepare an adequate defense due to the vagueness of the charges.

Regarding the substantive charge, the Organization argued that Carrier was fully aware of Claimant's medical status. Specifically, the Organization contends that Claimant, in a deposition taken a year prior to the charges, informed Carrier of the injuries sustained by him in an accident on May 7, 1975. The Organization alleges that Carrier, once informed of Claimant's physical status, took no action prior to the charges at issue. The Organization cites Claimant's testimony to establish that a Carrier official was present at the deposition in question, and argues that no question exists that Carrier knew of the accident and injuries well in advance of the charges. The Organization argues that Carrier only decided to institute charges after Claimant was injured while on duty, in an effort to avoid payment to Claimant.

The position of the Carrier is that Claimant was properly dismissed for falsifying his pre-employment application.

Initially, Carrier contends that Claimant was proven guilty of the charge through substantial evidence. Carrier cites Claimant's testimony that he admitted to personally filling out the pre-employment application, and admitted answering "no" to questions concerning whether he had previously sustained injuries. Carrier further cites the testimony of Engineer A. D. Smith that on February 4, 1985, he was informed that Claimant had been previously injured as a result of an automobile accident, and that Claimant had filed suit as a result of those injuries. Carrier additionally cites a record of Claimant's lawsuit filed on April 7, 1976 in the Circuit Court of Knox County, Tennessee, which it contends conclusively establishes that Claimant in fact sustained injuries and failed to indicate such on his pre-employment application. Finally, Carrier cites a pretrial deposition dated April 7, 1976, which, it asserts, further confirms that Claimant sustained the injuries in question. Carrier contends that the evidence as a whole leaves no doubt that Claimant falsified his pre-employment application and demonstrated a lack of honesty regarding his prior injuries. Carrier further contends that Claimant would never have been hired initially if he had honestly and accurately completed his application.

After review of the record, the Board finds that the claim must be denied.

It is not the purpose of this Board to rehear an investigation that Carrier held but only to determine if the discipline imposed was arbitrary, capricious or an abuse of discretion.

Carrier has adequately sustained the charge against Claimant. The court records and deposition cited by Carrier clearly establish that Claimant was involved in an automobile accident in 1975, sustained injuries as a result of that accident, and subsequently filed suit pertaining to the accident. Claimant, in his pre-employment application, stated that he had never sustained injuries and had never filed suit as a result of injuries sustained. In short, Claimant intentionally falsified his application in order to conceal the injuries sustained by him. Claimant's actions constituted clear and gross dishonesty, and misled Carrier into hiring him. Absent Claimant's misrepresentations, Carrier would not have hired him and is clearly under no obligation to retain him at this stage.

AWARD

Claim denied.


Neutral Member


Carrier Member


Organization Member

DATE: Oct. 1, 1987