

PUBLIC LAW BOARD NUMBER 3530

Award Number: 105

Case Number: 105

PARTIES TO DISPUTE

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

And

NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM

Claimant, R.L. Stanley, P.O. Box 162, Premier, WV 24878 was dismissed from service on December 29, 1988 for alleged responsibility of falsifying his Application of Employment and pre-employment medical questionnaire. Claim was filed accordance with the Railway Labor Act and agreement provisions. Employees request he be reinstated with pay for all lost time with seniority and vacation rights unimpaired.

FINDINGS

Claimant entered the Carrier's service in 1981.

By letter dated August 3, 1988, Claimant was notified to attend a formal investigation of charges he falsified his Application for Employment and related medical examination questionnaire. The formal investigation was postponed twice and finally was held on December 16, 1988. By letter dated December 29, 1988, Claimant was dismissed based on evidence adduced at the formal investigation.

The question to be decided in this dispute is whether Claimant was dismissed for just cause under the Agreement; and if not, what should the remedy be.

On November 27, 1978, Claimant was injured while employed as a miner. These injuries were sufficiently serious to warrant a finding of partial permanent disability. Based on several medical examinations between 1980 and 1985, Claimant had been found to be 12% disabled.

On September 11, 1981, Claimant applied for employment with the Carrier. On his employment application, he stated that he was in good health with no abnormalities or disabilities. Claimant signed the form, certifying that the information was true and accurate and acknowledging that any false statement or misrepresentation would justify dismissal. Claimant also completed a pre-employment physical examination during which no back problems were discovered. Claimant answered a series of questions at the physical examination stating that he did not have any back trouble and had not received workman's compensation. Based on this information Claimant was employed as a laborer. By letter dated August 2, 1988, the Carrier's Medical Director stated that had he known about Claimant's medical/injury problems, he would have disqualified Claimant from a laborer position.

During a routine discussion on July 29, 1988, Carrier Claim Agent Allen George told Division Engineer J. A. McCracken that Claimant had previously received disability for a back injury. McCracken researched the matter and learned of the above-stated disability.

Article XI of the Agreement provides:

Section 2 - Omission or Falsification of Information

An employee who has been accepted for employment in accordance with Section 1 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 position of the Carrier is that Claimant was dismissed for just cause under the Agreement. The Carrier contends that Claimant knowingly falsified his employment application and the answers provided during the medical examination. The Carrier also cites Claimant's testimony that he understood the question regarding back trouble but answered it incorrectly and points to the language on the employment application relating to injuries. The Carrier contends that Claimant has violated the trust which existed between him and the Carrier and that by the terms of the employment form and well established principles, it is warranted in dismissing Claimant.

The position of the Organization is that Claimant was unjustly dismissed. The Organization contends that Claimant did not have the education to fully comprehend the employment application or the written questions posed in the medical examination. The Organization points out that even during the investigation, Claimant had difficulty understanding what was transpiring in the proceedings. The Organization argues, by implication, that Claimant was not responsible for the answers on the forms because he did not write all the answers himself. Finally, the Organization contends that Claimant's answers were, essentially, irrelevant to the process of deciding to hire him because the medical examination should have detected any medical difficulties. The Organization asserts that the Carrier has failed to meet its burden of proof and that the discipline imposed is excessive.

After review of the entire record, the Board finds that the dismissal

of Claimant was for just cause.

The Carrier has sustained its burden of proving that there is substantive credible evidence in the record that Claimant falsified his employment application and the answers to questions posed to him by the Carrier's medical staff. While the Board sympathizes with Claimant's inability to read well, the record indicates that Claimant knew what the questions were but, nonetheless, signed the application and answers. The information as to previous injury is clearly false; Claimant admits the truth and the documents in the record speak for themselves.

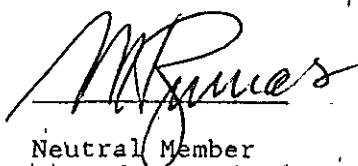
The Organization's assertion that Claimant is not responsible for the Carrier's reliance on his false statements and that the Carrier should have detected Claimant's injuries is without foundation. The Carrier is under no obligation to learn of an individual's medical state solely by examination. In many instances, the most important part of a medical examination is the oral interview between doctor and patient.

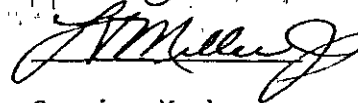
The Carrier is well within its rights to establish and enforce reasonable medical standards. The nature of railroad transportation demands that the Carrier take careful precautions as to the capacity of its employees to perform their duties in order to ensure the safety of other employees and the public at large. The employment application authorizes dismissal as a penalty for falsification by its own terms. And the falsification of such important information cuts to the very heart of the trust which underlies the employment relationship. Therefore, dismissal is warranted and reasonable under the circumstances. The Carrier has acted

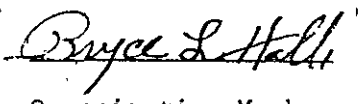
without arbitrariness, caprice or discrimination.

AWARD

Claim denied.

  
Neutral Member

  
Carrier Member

  
Organization Member

Date: FEB. 22, 1990