

PUBLIC LAW BOARD NO. 3845

PARTIES TO THE DISPUTE

Brotherhood of Maintenance of Way Employees)	
)	
and)	
)	Case No. 5
Norfolk and Western Railway)	Award No. 5
Company (Lake Region))	
)	

STATEMENT OF CLAIM

"Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of Trackman Lonnie R. Wagers for allegedly making a false statement on his application for employment was without just and sufficient cause and excessive. [Organization File: MW-FTW-83-7].
- (2) Claimant Lonnie R. Wagers shall now be reinstated with seniority and all other rights unimpaired and compensated for all wage loss".

OPINION OF THE BOARD

On March 31, 1980, Claimant applied for employment with Carrier. Under the heading "Military" on the application form, he entered "Honorable". Carrier accepted Claimant into its employ on May 28, 1980. On February 10, 1983, while being deposed in connection with a lawsuit against Carrier, Claimant

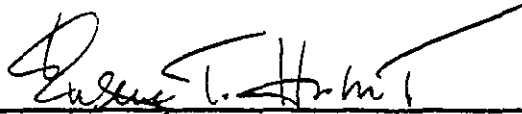
stated under oath that he had in fact received a Bad Conduct Discharge from the United States Marine corps. Following an investigation hearing on April 11, 1983, Claimant was notified of his dismissal from Carrier's service on April 22, 1983.

Claimant admitted his guilt at the investigation which was conducted with fairness and impartiality. The only questions which this Board need deal with relate to the materiality of Claimant's misrepresentation and the timeliness of Carrier's action in seeking Claimant's dismissal once it became aware of the misrepresentation. The Board is of the opinion that the misrepresentation was indeed material in that Carrier might well have refused employment to Claimant had it known the true circumstances of his military service and discharge. It is also evident in this case that Carrier moved promptly in seeking Claimant's dismissal as soon as it received knowledge of the misrepresentation. In no sense, therefore can Carrier be said to have waived its right to dismiss Claimant by a reservation of its action against him.

Accordingly, the evidence fully justifies Claimant's dismissal in this case.

AWARD

Claim denied.


E.T. Herbert, Neutral Member


S.C. Lyons, Carrier Member


H.G. Harper, Employee Member

