

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4979

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

NATIONAL RAILROAD PASSENGER CORPORATION

AWARD NO. 30

Case No. 30

System Docket No. BMW-E-D-216

STATEMENT OF CLAIM

(a) Carrier's dismissal of Claimant James Sanford was without just and sufficient cause, was not based on any clear and probative evidence and was done in an arbitrary and capricious manner, wholly beyond the Scope of the Scheduled Agreement.

(b) Claimant Sanford shall be reinstated into Carrier's service with all seniority entitlements and shall be compensated for all lost wages, including overtime benefits which would accrue to him, as provided for in Rule 16 of the Scheduled Agreement.

FINDINGS

The Claimant was the subject to an investigative hearing on November 24, 1993 under the following charge:

Development of the facts and determination of your responsibility, if any, in that you were allegedly dishonest in the completion of your employment applicant with the National Railroad Passenger Corporation, specifically as borne out in a deposition in a FELA case. You offered fictitious previous employment and were less

that forthright in providing responses to certain questions on the medical questionnaire. Additionally, you indicated you had no relatives working for the Corporation.

The Claimant did not attend the hearing, although he received proper notice thereof. He was represented by the Organization at the hearing. Thereafter, the Claimant was dismissed from service.

The Claimant, a Mechanic, was hired by the Carrier on October 17, 1989. As developed in the investigative hearing, the Claimant provided false information on his Application for Employment and his Pre-Employment Medical Questionnaire. The Carrier stated that it first became aware of this in October 1993, following receipt of a deposition by the Claimant in connection with an on-duty accident occurring on August 26, 1991.

In his employment application, the Claimant stated that he had been employed by the "Lucken Construction Company" between 1983 and 1989. As developed in the 1993 deposition, he did not work at this company. Rather, he stated that he had worked, prior to 1984, for the East Greenwich Dairy, a company which had not been listed at all on the Claimant's employment application form. Further, in the 1993 deposition, the Claimant stated he had sustained a back injury while working for that company and had not worked at all in the period from 1984 to 1988. The deposition also showed that in 1987 he settled a workers' compensation claim in reference to the back injury.

In the Pre-Employment Medical Questionnaire, the Claimant answered in the negative to whether he had incurred any "back

injury". He also answered in the negative as to whether he had "ever applied for or received workman's compensation or disability payment".

The Organization contends that the Carrier is too late in questioning the employment documents four years after the Claimant commenced employment with the Carrier. The Organization argues that the Carrier had the opportunity to check the Claimant's employment history at the time of hiring, but it failed to do so.

The Carrier states that, had the Claimant been truthful in the pre-employment forms, he would not have been hired. The Claimant was apparently fully aware of this. In the 1993 deposition, the Claimant frankly admitted to his providing false information because of his fear that he would not have been employed.

Where an employer is aware of untruthful or misleading information as to an employee's work history and then fails to take prompt action, a resulting dismissal may be found to be inappropriate. This is because such employer could have acted earlier, but did not do so. Here, however, the Carrier convincingly states that its first knowledge came only when the deposition text was sent to the appropriate management representative in October 1993. It cannot be found that the Carrier simply "sat" on information by failing to take action. Thus, the Carrier may act as if it had received truthful information in the first place. While the Carrier could have checked the information initially provided by the Claimant, it is not required to do so and may assume that the applicant has provided truthful information .

A W A R D

Claim denied.



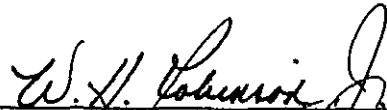
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HERBERT L. MARX, Jr., Chairman and Neutral Member



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B. A. WINTER, Employee Member



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W. H. ROBINSON, Jr., Carrier Member

NEW YORK, NY

DATED: 10-6-94