

PUBLIC LAW BOARD NO. 5418

Case No. 71

Award No. 71

PARTIES

Brotherhood of Maintenance of Way Employees

To

-and-

DISPUTE:

Pan Am Railways

STATEMENT OF CLAIM:

Claim in behalf of Raymond P. Williams who was dismissed from service effective July 17, 2008.

FINDINGS: This dispute arose as a result of the Carrier charging the claimant with the following offense:

“your responsibility, if any, in connection with the following charge:

Application Omission & Violation of General Rule PGR-L.

Specifically, on June 4, 2008 it was discovered that you omitted any reference to the fact that you had previously been employed by Springfield Terminal Railways and consequently terminated. This is in direct violation of the application that you signed on June 20th of 2005. This application reads as follows.

“By signing this application, I certify this application is complete and accurate **and that I have not made any attempt to conceal information.** Furthermore, I understand that falsification is cause for dismissal. I confirm that statements made by me herein and other information given by me pursuant to my becoming an employee are true, complete, correct and made in good faith. **I understand that any misstatements, omission or misrepresentation will be sufficient cause to cancel this application, terminate an offer of employment or immediate dismissal if already employed.** I understand this application will be active for a period of 6 month; after that time, if I wish to be considered for employment, I will have to fill out a new application.” (Emphasis added)

Also, the violation of general rule PGR-L, which reads in part “Employees who are dishonest....will not be retained in the service.”

Following a formal investigation, which was postponed twice and eventually held in absentia, the Carrier found the claimant of violating General Rule PGR-L, and dismissed him from service effective July 17, 2008.

Undisputed records show the claimant was given a timely notice to appear for an investigation regarding the above stated charges, and that after 2 postponements he failed to appear at the re-scheduled investigation which was held in absentia. While the Board prefers to review investigations that include claimant's testimony, given the facts presented, we found no improprieties in the handling of this case and conclude the investigation was conducted in a fair and impartial manner.

After a thorough review of the testimony and documents brought forth in the record, the Board finds the claim to be non-meritorious. The employment application that the claimant signed was clear and unambiguous, and stated quite clearly what the consequences would be for concealing information. The record shows the claimant purposely omitted the fact that he had been previously dismissed by the Carrier. There is absolutely no excuse for such a deliberate and dishonest omission of fact, and the claimant must therefore bear the consequence of his actions.

Therefore, based on the evidence present, the Board finds the Carrier was on solid ground when they terminated this employee. Hence, we will not alter their decision.

AWARD: The claim is denied.


A. F. Lamonto
Carrier Member


Francis J. Domzalski
Neutral Member


B. A. Winter
Organization Member

Dated 9-9-2009