

PUBLIC LAW BOARD NO. 1582

PARTIES) THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY  
TO )  
DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

STATEMENT OF CLAIM: Claim in behalf of former B&B Mechanic J. W. Spencer as follows:

1. That the Carrier violated parties agreement, particularly, but not limited to Article V by unjustly removing Mr. Spencer from service June 16, 1978 as a result of formal investigation held same date.
2. That the Carrier now reinstate Mr. Spencer to service with seniority, vacation and all other benefits unimpaired and compensate him for net wage loss incurred beginning June 16, 1978 continuing forward until his reinstatement.

FINDINGS: This Public Law Board No. 1582 finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction.

In this dispute a formal investigation was held on June 5, 1978 to develop the facts and place the responsibility concerning claimant's alleged misrepresentation in his application for employment. As a result of the testimony developed and evidence introduced at the investigation, the claimant was found responsible for falsification of his application for employment and was discharged as a result thereof.

The transcript and evidence of record reveals that on April 24, 1978 the claimant was arrested at the scene of a burglary in the vicinity of Corwith Yards, Chicago, Illinois by the City of Chicago Police Department. The Carrier was notified and then required their special agents to begin an investigation of their own regarding the claimant and his arrest.

During the process of this investigation the Carrier's special agents viewed the claimant's application for employment dated May 31, 1977. The special agents also investigated the claimant's background regarding arrests and convictions with the Chicago Police Department.

It was discovered that the claimant had been arrested by the Chicago Police Department on September 23, 1975 on suspicion of theft of some typewriters. On October 21, 1975 the claimant pled guilty and was convicted of theft for the incident for which he was arrested on September 23, 1975 and was given a sentence of one year's probation.

Evidence reveals that on the application for employment the claimant had answered "no" to the question: "Have you ever been convicted of a crime?" The transcript of record reveals that the claimant testified that he thought his having a misdemeanor such as theft a long time ago wasn't important.

Perhaps this might not have been important if it was a long time ago, but the application for employment was filed May 31, 1977 and the claimant pled guilty on October 21, 1975. This does not appear to the Board to be such a long time ago that the claimant might not realize that checking such information correctly could act as a bar to his employment.

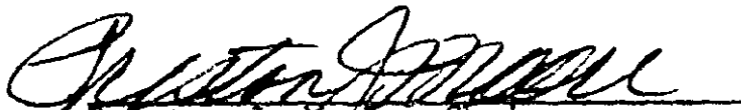
At the investigation the claimant stated that he thought a misdemeanor crime was not important when it happened years back because it was not a serious crime. The theft of typewriters certainly can justify a more serious charge than a misdemeanor charge. If the authorities had desired to do so, felony charged could have been filed against the claimant at that time.

The application for employment states that falsification of the application constitutes cause for discharge. Misrepresentation of facts in an employee's record has been the basis for many claims. A general principle which has been established over the years is: "Did the applicant misrepresent facts which would have barred the employer from accepting his application for employment at that time?"

Obviously mistaken answers or answers to immaterial questions do not come within that category. However, in the instant case a recent plea of guilt to theft is of such a serious nature that the Carrier would most likely not be interested in employing an applicant with that background. Under the circumstances herein the Board finds no justification to overrule the decision of the Carrier.

Needless to say, the Board has examined all of the evidence of record, including all the supporting evidence furnished by the Union, as well as Carrier's exhibits A through O. In conclusion, it is the holding of the Board that falsification of the application record alone is insufficient to justify discharge, but in this instance falsification of information which would have precluded the Carrier from employing the claimant does constitute grounds for discharge.

AWARD: Claim denied.

  
Preston J. Moore, Chairman

  
Organization Member

  
Carrier Member