

PUBLIC LAW BOARD 1837

(MW-CGO-77-9)

Case No. 42

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees
vs
Norfolk and Western Railway Company

STATEMENT OF CLAIM:

1. The Carrier violated the effective Agreement dated February 1, 1951, on December 28, 1977, when it dismissed claimant A. Covington from service.
2. The dismissal of the claimant was excessive, unwarranted and unjustified. The claimant now be restored to service with seniority and benefits unimpaired and payment allowed for the assigned hours actually lost, less any earnings in the service of the company.

FINDINGS:

This Board upon the whole record and all the evidence finds that:

The carrier and the employee involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as amended.

This Board has jurisdiction over the dispute involved herein.

OPINION:

Claimant submitted an application for employment dated March 25, 1977. As part of such submission, the Claimant was required to disclose any arrests; he listed "reckless driving and disorderly conduct" in 1971. At the signature line on his

application is a statement of certification as to the accuracy and honesty of such statements. The Claimant was employed thereafter as a trackman. Commencing November 8, 1977 and continuing thereafter the Claimant was absent from duty. The Carrier was to eventually learn that the Claimant had been arrested in Pennsylvania in September of 1976 for conspiracy to commit forgery -- a fact he failed to divulge when he completed the application. By letter dated November 22, 1977, the Carrier was advised that the Claimant had returned to Pennsylvania to answer such charges and to stand trial. By certified letter dated November 30, 1977, the Claimant was advised of a hearing concerning his absence from duty and for his failure to disclose the aforementioned arrest for forgery; service of such letter was taken. The Claimant failed to appear and the Carrier proceeded with the hearing over objection of the Organization.

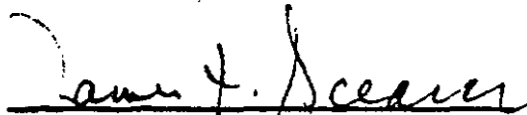
We need look no further than the Claimant's failure to disclose the arrest to dispose of this case. He signed his application withholding such a serious factor in full vision of a "warning statement" which is clear and unambiguous both as to its intent and the results that could issue if information was falsely furnished or withheld. The Claimant was in "error ab initio" -- from the very beginning, and neither favorable performance on his part nor any procedural flaws by the Carrier -- if any had occurred -- would offset the original mistake by the

Claimant.

By his own actions, the Claimant has denied himself the right to employment if the Carrier wishes that to be the case. By the outcome of its deliberation, the Carrier has chosen that course of action.

AWARD:

Claim is dismissed.


James F. Searce
Neutral Member


G. C. Edwards
Carrier Member


W. E. LaRue
Organization Member

Dated at Washington DC this 1 day of June 1981