

PUBLIC LAW BOARD NO. 1850

Award No. 7

Docket No. 12

Org. File No. A-9

Carrier File 2-MG-1559

Parties Brotherhood of Maintenance of Way Employees
to and
Dispute Baltimore & Ohio Railroad Company
Statement of Claim: Claim on behalf of Trackman Donald L. Copeland, Akron-Chicago Division, account of his being dismissed from the service for falsifying his employment application dated September 26, 1974.
Findings: The Board finds, after hearing upon the whole record and all evidence, that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated October 27, 1976, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearings held.

Claimant was first hired by Carrier July 10, 1974, subject to his successfully passing a physical examination. His failure to take such an examination within the first sixty-day period resulted in Carrier's rejection of his employment application and termination of employment on September 11, 1974. Subsequently, Claimant submitted himself to a physical examination and filled out an application form and medical questionnaire on September 26, 1974. He was re-employed on October 1, 1974.

An on the job injury, on August 25, 1975, resulted in Claimant's loss of five (5) days of work. Carrier's investigation of claimant's injury resulted in discovering that Claimant had a history of knee trouble which he had failed to disclose.

Claimant was given an investigation on December 12, 1975 and charged with: "...falsifying your employment application at Akron, Ohio on September 26, 1974."

Claimant, as a result of the evidence adduced, was found guilty. He was dismissed from Carrier's service as discipline therefor.

Claimant was accorded due process. There was sufficient credible evidence

adduced to support Carrier's conclusion that Claimant had falsified his employment application of September 29, 1974. Said application contained the following above Claimant's signature:

"...I hereby certify that the answers in this application are true and complete. I understand that any falsification, misrepresentation, or significant omission may constitute just cause for dismissal, regardless when discovered."

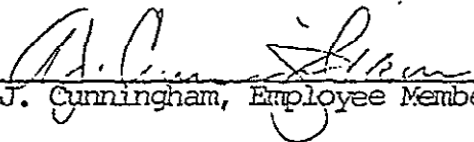
Claimant's negative answers to Questions 54, 55 and 56 on the employment application, whether wilful or otherwise, were misleading and resulted in a falsification. Thus the basis of just cause was established. The misleading information was vital to Carrier's judgment as to prospective employment of Claimant. Consequently, Claimant's failure to properly disclose the true facts as to his physical conditions was a misrepresentation of the facts and disadvantaged Carrier.


Claimant's dismissal was consistent with the principle enunciated by innumerable Board Awards and exemplified by Third Division Award No. 18103, which held:

"This Board has consistently held that an employee who falsifies his employment application, irrespective of the elapsed time between date of the application and the date the falsification was discovered, is subject to discharge. Awards 14274, 11328, 10090, 13994, 5994, 5665, 4391 and 4328."

Consequently, this Board is constrained to deny the claim herein.

Award: Claim denied.


A. J. Cunningham, Employee Member


L. W. Burks, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member