

PUBLIC LAW BOARD NO. 2182

Award No. 17

Case No. 18

Docket No. MW-78-37

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute Southern Pacific Transportation Company
-Texas and Louisiana Lines-

Statement of Claim 1. Carrier violated the effective agreement when Houston Division B&B Helper J. J. Walker was unjustly dismissed on January 3, 1978.
2. Claimant J. J. Walker be reinstated to his former position with pay for all time lost and with vacation, seniority and all other rights unimpaired.

Findings The Board, after hearing upon the whole record and all evidence, finds 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 May 22, 1978, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

Claimant was employed as a B&B Helper on Carrier's Houston Division on September 15, 1976. He was advised by letter dated January 19, 1978 that he was dismissed. Said letter read as follows:

"For your responsibility in falsification of your personal record, Form S-2946, signed by you on September 13, 1976, when you answered "No" to question No. 15, "Have you ever been injured? _____ If injured, did you present a claim? _____", your services with the Southern Pacific Transportation Company are terminated effective at 3:30 PM, January 19, 1978, as per No. 26 on Form S-2946, which reads: "I hereby declare that the information given in the foregoing is true and correct and that any misrepresentation or false statement herein will justify and cause termination of my service regardless of when such fact may be discovered by the Company."

The Claimant requested a hearing, which was granted. The hearing was held February 9, 1978. As a result of the evidence adduced thereat Carrier concluded that Claimant was proven guilty as charged. He was so advised, by letter dated February 10, 1978, that the decision of dismissal was sustained.

There are no procedural objections to precluding our review of the case on its merits. Sufficient competent and credible evidence, including Claimant's testimony, was adduced to demonstrate that Claimant falsified his application for employment. In fact, while Claimant testified that he had not received any compensation from the former employer in question, the records from the State of Texas, Industrial Accident Board, at Austin reflected that Claimant had claimed a serious injury, was off from work because of this injury, had hired an attorney and had received a compromised settlement of \$2,740.00. Additionally, Carrier demonstrated that Claimant had not been telling the truth when he attested that his injury at Allied Pipe and Supply Company, Inc. was of minor nature, he had not lost over two days time and that he had not received any compensation therefrom. Yet, the records from the State of Texas Industrial Accident Board revealed that Claimant Walker received an injury, which he alleged there was of a serious nature, as a result thereof he was unable to work, he hired an attorney, and Claimant Walker received a compromised settlement in the amount of \$1,770.00.

Claimant, by falsifying his employment application had wilfully mislead Carrier while providing cause for it to make an employment judgment based on less than the full facts. Such deception when, as here proven, has been a consistent basis for discharge.

Judge Stone, in Second Division Award 1934 held:

"A record of several recoveries for injury in previous employment may have other implications other than that of physical disability and is a proper subject of inquiry and investigation. Such investigation as to prior injuries cannot be made in absence of knowledge of them. To deny carrier the right to discharge on learning of false denial of prior injuries is to deny it the right to discharge on learning of false denial of prior injuries is to deny it the right to investigate the true record of an applicant, and that right is not waived by lapse of time in the absence of knowledge of the false answer."

Similarly, Second Division Award 6391 held:

"The employment application is a tool which the Carrier may appropriate use in his employment decision for either rejection, or further investigation prior to making a decision. In this case an accurate answer to Question 14 would at minimum have given the Carrier the option of further investigation."

Second Division Award 6013, also held:

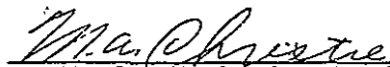
"It is the opinion of this Board that Carrier has the right to demand a high degree of integrity from its employes and has the right to insist upon truthful and accurate statements made in their applications for employment. Carrier has successfully supported each and every contention of the Organization and has left the Claimant void of any defense. Claimant was dishonest in furnishing false information when completing his personnel record form prior to going into the service of Carrier on July 17, 1968, which gave Carrier the right, under Rule 801, to dismiss Claimant from service. Therefore, this claim will be denied."

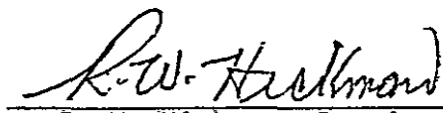
Third Division Award 18103 typifies the view of the various Division of the National Railroad Adjustment Board as to the doctrine that may be held when there is lapse of time between the filing of the employment application and the discovery that such had been falsified. There Award 18103 held:

"This Board has consistantly held that an employe who falsified his employment application, irrespective of the elapsed time between the date of the application and the date when falsification was discovered, is subject to discharge."

In the circumstances Claimant, who had received a fair and impartial hearing, was found guilty as charged and was properly dismissed. This Claim will be denied.

Award Claim denied.


M. A. Christie, Employee Member


R. W. Hickman, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued at Wilmington, Delaware, March 31, 1979.