

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 2406

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)

-and-

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

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CASE NO. 45

AWARD NO. 45

Public Law Board No. 2406 was established pursuant to the provisions of Section 3, Second (Public Law 89-456) of the Railway Labor Act and the applicable rules of the National Mediation Board.

The parties, the National Railroad Passenger Corporation (Amtrak, hereinafter the Carrier) and the Brotherhood of Maintenance of Way Employees (hereinafter the Organization), are duly constituted carrier and labor organization representatives as those terms are defined in Sections 1 and 3 of the Railway Labor Act.

After hearing and upon the record, this Board finds that it has jurisdiction to resolve the following claim:

"(a) The Carrier violated the effective Agreement dated May 19, 1976, on March 3, 1981, by unfairly and without just cause, the Carrier dismissed the Claimant, Bruce F. Arnold, Sr.

(b) Claimant Arnold shall be restored to service with seniority in benefits unimpaired and the matter expunged from his record and compensated for all wage loss."

The Claimant, Bruce Frederick Arnold, Sr., entered the service of the Carrier on April 21, 1980. The last day the Claimant actually performed work for the Carrier was October 8, 1980, when he ceased working because of an injury. At that time, Claimant was a Trackman for TLS (Track Lane System), and worked from a moveable camp site. By letter dated February 9, 1981, the Carrier notified the Claimant to appear for trial on February 26, 1981, in connection with the following charges:

"Violation of NRPC General Rule 1, reading in part:

"Employees will not be retained in service who are... dishonest...or who do not conduct themselves in such a manner that the Company will not be subjected to criticism and loss of good will."

Specification: In that you falsified Pre Employment Questionnaire, dated 4/8/80 regarding receiving Workmen's Compensation or disability."

After two changes in the trial date, the Carrier held the trial as originally scheduled on February 26, 1981. The Claimant was present and accompanied by a duly designated representative of the Organization. By notice dated March 3, 1981, the Carrier notified the Claimant that it had found him guilty of the charges and thus dismissed him effective immediately.

The Carrier maintains that the record evidence supports its finding that the Claimant violated NRPC General Rule 1 prohibiting dishonesty, by falsifying a pre-employment medical questionnaire, and that discharge is an appropriate penalty.

The Organization makes a number of procedural and substantive contentions in support of the Claimant. The Organization contends that the Claimant did not receive a fair and impartial hearing since the Carrier did not process the claim in a timely fashion; the Carrier did not inform the Claimant until the trial of the specific document he allegedly falsified; and, the Carrier did not prove that the Claimant intentionally falsified any records. The Organization also contends that the Carrier did not prove that the Claimant would not have been hired if the Carrier had had timely knowledge of the alleged falsification, as required by Article XI, Section 2 of the Agreement between the parties, which section concerns falsification of information on employment applications.

The record establishes that in January 1980, the Claimant was working for Sheppard & Enoch Pratt Hospital. A patient assaulted the Claimant. The Claimant received injury to his right eye, neck, cervical spine, nose and head. On January 25, 1980, the Claimant applied for Workmen's Compensation. Thereafter, the Claimant applied for employment with the Carrier. A pre-employment medical questionnaire completed by the Claimant


on April 8, 1980, approximately ten weeks after he filed for Workmen's Compensation, contained the question "Have you ever applied for or received Workmen's Compensation or Disability Payment?" The Claimant responded "No."

In January 1981 the Carrier first became aware that the Claimant had filed for Workmen's Compensation prior to completing the medical questionnaire. As a result, the Carrier issued the Notice of Trial referred to above. The Organization maintains that the Claimant misunderstood the question concerning Workmen's Compensation, and believed it to ask whether he had received payment. Since the Claimant had not yet received any money as the result of his claim, the Organization argues that he truthfully responded "no."

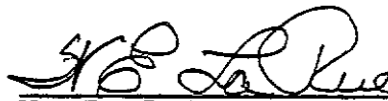
This Board finds the Organization's procedural contentions to be without merit. The record supports the Carrier's position that it granted the Claimant a fair and impartial trial and processed his claim in a timely fashion. The Board also concludes that the record evidence supports the Carrier's finding that the Claimant acted dishonestly in falsifying the application, and that discharge was not an overly severe penalty. The Claimant's contention that he misunderstood the question lacks credibility. The wording of the question clearly asks whether the Claimant had ever "applied for or received Workmen's Compensation" (emphasis added). This Board does not consider

discharge to be an arbitrary penalty, especially since the medical questionnaire clearly states that "misleading responses or omissions of relevant information could constitute grounds for dismissal at any subsequent time." Additionally, although the Carrier did not terminate the Claimant under the provisions of Rule XI, Section 2, this Board considers the falsification to be of a critical nature. The position for which the Claimant was applying, Trackman, is a dangerous and physically strenuous job. It is reasonable to conclude that had the Claimant truthfully answered the question, and if the Carrier was thus aware of his previous injuries, it would not have hired the Claimant. Accordingly, this claim will be denied.

AWARD: Claim denied.



L. C. Hriczak, Carrier Member



W. E. LaRue, Organization Member



Richard R. Kasher, Chairman
and Neutral Member