

PUBLIC LAW BOARD NO. 2774

Award No. 141

Case No. 141

PARTIES
TO
DISPUTE

Brotherhood of Maintenance of Way Employees
and
Atchison, Topeka and Santa Fe Railway Company

STATEMENT
OF CLAIM

- "1. That the Carrier's decision to dismiss Mr. W. A. Clark was in violation of the agreement, unduly harsh and in abuse of discretion.
2. That Carrier be required to reinstate Claimant Clark to his former position with the Carrier with seniority and all other rights restored unimpaired and that he be compensated for all wage loss suffered because of the violation as referred to above."

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

Claimant herein filed an application for employment with Carrier on December 15, 1983, and was employed as a Trackman on January 4, 1984. On May 15, 1984, claimant was withheld from service and charged with violation of Carrier's rules for allegedly falsifying his application for employment. Following an investigation held on June 6, 1984, claimant was dismissed from service having been found guilty of the charges.

Petitioner insists that the conviction for the crimes which claimant admitted to occurred some seven years prior to his being employed by Carrier, when he was only 21 years of age. In addition, there is no clear evidence that Carrier would not have hired claimant had Carrier been aware of claimant's prior criminal record. Carrier, on the other hand, categorically insists that it would not have hired claimant had it been aware of his past criminal record, particularly in view of the nature of the crimes for which he was convicted. Additionally,

the falsification of his application was deliberate and conscious and cannot be construed in any other fashion. In view of this type of violation Carrier insists that his discharge was appropriate and the claim should be denied.

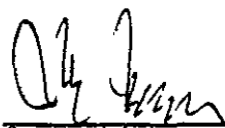
The record indicates that claimant had been convicted of a felony on two occasions, one for assault with a deadly weapon. This information was revealed to Carrier some five months following his employment only because he was arrested for an unrelated matter and, in the course of the investigation of that matter, his past record was discovered. The testimony adduced at the hearing was clear in that Carrier's policy was that employees who had been convicted of felonies would not be hired.

With respect to petitioner's insistence that the incident involving his past criminal record took place some seven years earlier, as the Board views it that contention is immaterial.

The Board holds that it is a generally accepted proposition that Carrier, as an employer, is entitled to receive information on applications for employment which will put it on notice of any factors which it should consider before granting employment status to an individual. At minimum, information on that application would permit Carrier to investigate further before deciding whether or not to employ an applicant. In this instance, that opportunity was denied the Carrier. Many, many awards have held that carriers have the right to discharge employees found guilty of falsifying employment applications (see, for example, Third Division Award 18103, Second Division Award 5959 and Second Division Award 6391). The record is also amply clear that Carrier's policy was such that the conviction for the felonies was sufficient grounds for denying him employment at the first stage of the relationship. Thus, in conclusion, the Board is convinced that the charge against claimant of falsification of his employment application was established and Carrier was well within its rights to dismiss him for this infraction, which is considered to be extremely serious.

AWARD

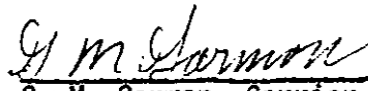
Claim denied.



I. M. Lieberman, Neutral-Chairman



C. F. Foote, Employee Member



G. M. Garmon, Carrier Member

Chicago, Illinois

February 6, 1986