

PUBLIC LAW BOARD NO. 2774

Award No. 52
Case No. 61

PARTIES
TO
DISPUTE

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

STATEMENT
OF CLAIM

- "1. That the dismissal of Plains Division miscellaneous machine operator Walter T. Taylor, after a formal investigation May 19, 1981, was unjust.
- "2. That claimant Taylor be reinstated to service with seniority, vacation, all benefit rights unimpaired, paid for wage loss and/or otherwise made whole."

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.

Mr. Taylor was hired by Carrier on April 21, 1980, as a track man. Following an investigation held on May 19, 1981, Mr. Taylor was discharged for falsification of his employment application.

Section (b) of Article XI of the October 30, 1978 National Agreement provides as follows:

"Omission or falsification of information. An employee who has been accepted for employment in accordance with Section (a) will not be terminated or disciplined by the Carrier for furnishing incorrect information in connection with an application for employment or for withholding information therefrom, unless the information involved was of such a nature that the employee would not have been hired if the Carrier had had timely knowledge of it."

The employment application contains a statement by the individual filling out the application that it was true to the best of his knowledge and that he understood

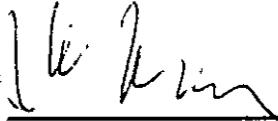
any misrepresentation would be sufficient cause for discharge. In that employment application, the claimant indicated that he had not been convicted of a crime. The testimony at the investigation indicates that in 1973 claimant had been arrested for shoplifting and assault. The shoplifting charge was dropped but Mr. Taylor was fined court costs plus \$97.50 for the assault charge at that time. The charge was simple assault. The employment application also omitted employment with one company in which he had been discharged and had incorrect information as to the basis for his leaving at least one other employer. In that instance he had been fired and he had indicated on his application that he had been laid off. There was testimony at the investigative hearing that the Carrier Officer responsible for employment would not have hired Mr. Taylor had he been aware of his previous employment record, as well as his previous criminal charge and conviction.

The Petitioner contends that Carrier abused its discretion in its decision to discharge Mr. Taylor. This is urged by the organization due to the lengthy period of time between the employment and the ultimate decision to dismiss the claimant. The Carrier argues that it is clear that claimant had furnished false and misleading information on his application for employment and, furthermore, he would not have been hired if Carrier had been aware of his past record.

The Board notes that there is no restriction on the length of time which must elapse between an employee's initial employment with the Carrier and the time that false information was discovered on his original application. Thus, although it is regrettable that it took eighteen months from the time of employment until Carrier discovered the information to be incorrect on the employment application, that does not in itself prevent Carrier from taking appropriate action. With respect to the decision to terminate claimant, Carrier was well within its rights in accordance with the agreement to decide that claimant was guilty and should be terminated. There is no doubt but that he had falsified his employment application and would not, according to the testimony, have been hired by Carrier had that information been known at the time of his original employment. Thus, the claim must be denied.

AWARD

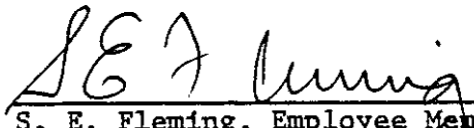
Claim denied.



I. M. Lieberman, Neutral-Chairman



G. M. Garmon, Carrier Member



S. E. Fleming, Employee Member

April 29, 1983
Chicago, Illinois