

PUBLIC LAW BOARD NO. 4244

Award No. 201

Case No. 206

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

Parties to Dispute:

-and-

**THE ATCHISON, TOPEKA AND
SANTA FE RAILWAY COMPANY**

Statement of Claim:

1. That the Carrier's decision to remove Eastern, Sectionman, Randy Blehm from service was unjust.
2. That the Carrier now reinstate Claimant Blehm with seniority, vacation, all benefit rights unimpaired and pay for all wage loss as a result of Investigation held 1300 hours on August 6, 1996 continuing forward and/or otherwise made whole, because the Carrier did not introduce substantial, credible evidence that proved that the Claimant violated the rules enumerated in their decision, and even if Claimant violated the rules enumerated in the decision, removal from service is extreme and harsh discipline under the circumstances.
3. That the Carrier violated the Agreement particularly but not limited to Rule 13 and Appendix 11, because the Carrier did not introduce substantial, credible evidence that proved the Claimant violated the rules enumerated in their decision.

INTRODUCTION

This Board was duly constituted by agreement of the parties dated January 21, 1987, as amended, and as further provided in Section 3, Second of the Act, 45 U.S.C. Section 153, Second. This matter came on for consideration before the Board pursuant to the expedited procedure for submission of disputes between the parties. The Board, upon review of the entire record, finds that the parties involved in this dispute are a Carrier and employee representative ("Organization") within the meaning of the Railway Labor Act ("Act"), as amended.

FINDINGS

The claimant, Randy J. Blehm, was charged on July 12, 1996, with failure to disclose factual information on his employment application in violation of Safety Rule 1.6 of the Safety Rules and General Responsibilities for All Employees, and Rule 1.6 of the General Code of Operating Rules. A formal investigation was conducted on August 6, 1996, and a notice of discharge issued on August 7, 1996, for infraction of the aforementioned rules.

In February 1996, the general roadmaster on the Kansas Division requested that a number of track laborers be hired. The claimant, Randy Blehm, was contacted along with other applicants for an orientation and aptitude test on February 24, 1996. Among the various forms completed by the claimant was an employment application form. (Carrier Exhibit 4). The applicants were verbally instructed to disclose on the application form any

criminal convictions. The applicants were informed they need not disclose minor traffic violations, such as speeding, which had occurred five or more years ago, but were told to report DUI or DWI convictions. In particular, each applicant was required to answer the following question: "Have you ever been convicted of a crime? (A conviction record will not necessarily bar applicants from employment.)"

Claimant marked the "Yes" box, and specified that he had a DUI conviction in 1992, but possessed a valid license at the time of the application. The claimant signed and dated the application on February 24, 1996. The claimant's employment application was forwarded to a company in Minneapolis, Verifications Incorporated, pursuant to a separate Release of Information Authorization signed by the claimant on the date of his application, and an authorization of investigation contained in the application itself.

A statewide search of criminal records for the State of Kansas for the period 1979 to 1996 found the claimant had been charged and/or found guilty of the following offenses:

1. December 8, 1991 - Guilty of assault; Sentence: Serve 1 year probation and 120 days in jail suspended.
2. December 8, 1991 - Guilty of two charges of battery and one charge of assault for which claimant was sentenced to 1 year probation and 30 days in jail.
3. October 7, 1987 - Guilty of criminal trespass: 9 months probation, 120 days in jail suspended and restitution ordered.
4. February 27, 1991 - Guilty of possession of hallucinogenic: 1 year probation, 1 year in jail and \$100 fine.
5. February 23, 1993 - Guilty of driving under the influence of alcohol or drugs: 1 year probation, 5 days to 6 months in jail; \$500 fine.
6. December 16, 1993 - Guilty of probation violation: no jail time.

7. March 30, 1996 - Charged with battery: case referred to county prosecutor - no disposition shown.

The Board finds the record clearly demonstrates the claimant was made aware of the need for full disclosure of all criminal convictions, including traffic violations except for those which were only the most minor in nature. The testimony of the directors of employee relations and the roadmaster from Kansas City was unrefuted that had claimant's history of criminal convictions been accurately disclosed during the hiring process to be the record revealed during the employment application verification process, the claimant would never have been hired by the Carrier. (Testimony of James; Testimony of Munguia; Testimony of Schibbelhut).

The Board further finds the claimant was verbally forewarned of the necessity to "come clean" with respect to any criminal convictions as required by the employment application, but failed to do so. Nor does the Board find credence in the claimant's assertion he was cautioned to mention only convictions within five years of the date of the application. Even if the claimant's assertion of a time limit was assumed to be accurate, he failed to mention either the conviction for possession of a hallucinogen on February 27, 1991, or his probation violation in December 1993.

The Board finds no reasonable basis to read the employment application question as restricted to felony convictions only; the question contains no such limitation, and

there is no credible evidence the Carrier personnel involved in the hiring process ever expressed or implied the use of the term "conviction" was limited to felony crimes only. If this were so, why did the claimant answer the question by reference to a misdemeanor DUI conviction? In sum, the Board must conclude the claimant was not truthful when he completed the Carrier's employment application on February 24, 1996. Clearly, had the claimant been truthful in completing the application for employment he would not have been hired by the Carrier. By signing the employment application, the claimant agreed: "that misrepresentation or omission of facts called for herein will be sufficient cause for . . . termination of my continued employment whenever such facts are discovered." Absent a demonstration of inaccuracies in the verification process or information, or other mitigating evidence, the claimant's discharge was for just cause.

AWARD

The claim is denied.



Greg Griffin, Carrier Member



Clarence F. Foose, Employee Member



Jonathan I. Klein, Neutral Member

Award issued the 13 day of January, 1996.⁷