

PUBLIC LAW BOARD NO. 4426

BROTHERHOOD OF MAINTENANCE OF :
WAY EMPLOYEES :
"Organization" :
VS. :
Award No. 8
CENTRAL VERMONT RAILWAY, INC. :
"Carrier" :

STATEMENT OF CLAIM:

Claim of the Brotherhood that:

(a) Carrier's dismissal of Claimant Donald P. Bovat was arbitrary and capricious and based upon vague and indefinite charges.

(b) Claimant Bovat shall be reinstated into Carrier's service with all seniority and be compensated for all lost wages, as provided for in Rule 27-A of the Scheduled Agreement.

OPINION OF THE BOARD

Claimant, D. P. Bovat, was discharged on September 4, 1986 for allegedly falsifying his application for employment.

Upon being notified of his dismissal, Claimant requested a hearing, which was held on October 14, 1986. On October 17, Carrier informed Claimant by certified mail that his dismissal was confirmed. Appeal was made through various levels of grievance procedure, and was declined at all levels. The hearing before this Board took place on February 29, 1988. Claimant was

present and represented by the Organization.

The basic facts giving rise to this claim are not complex. On April 15, 1986, Claimant filled out an application for a trackman position with the Carrier. Prior to being hired, Claimant underwent an interview and physical examination, during which he denied having any previous back trouble. Claimant was eventually hired for the position. On August 19, 1986 and September 2, 1986 Claimant suffered lower back strain while at work. During the process of investigating the causes of these two injuries, it came to light that Claimant had previously encountered back difficulty sometime in 1984 prior to his employment with the Carrier. Carrier then terminated the Claimant.

Carrier maintains that the Claimant's discharge was proper, as he withheld from the Carrier information concerning his prior back difficulties. The Organization contends that the Claimant did not knowingly and purposely mislead the Carrier, that the charge against the Claimant was insufficient to provide him adequate notice, and that the hearing on the property was conducted improperly.

This Board has determined that the Claim must be denied.

The Carrier has successfully established that prior to his being hired, the Claimant knowingly and purposely withheld information concerning a previous back problem. In or around 1984, the Claimant suffered a lower back strain while working on a farm. Nonetheless, on his application for employment with the

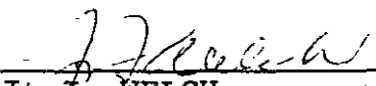
Carrier, the Claimant wrote "none" in response to a question asking whether he had "serious injuries or serious illness." In addition, during an interview conducted the same day, the Claimant was specifically asked if he had any previous back trouble. The Claimant again did not reveal his 1984 back strain. Finally, on April 18, 1986, the Claimant underwent a pre-hire physical and completed another form pertaining to his physical condition. The Claimant therein responded "no" to a question asking "have you ever had, or have you now...back trouble or sciatica or lumbago." Given the totality of these circumstances, the Carrier had proper grounds to discharge the Claimant, a short term employee.

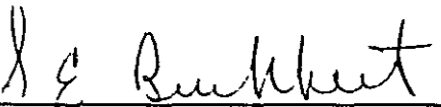
The Board has further determined that the Carrier committed no procedural errors which would warrant setting aside the discipline imposed. Accordingly, despite the Organization's strenuous efforts on behalf of the Claimant, the claim must be denied.

AWARD

Claim denied.


 W. E. LA RUE,
 Organization Member


 J. J. WELCH,
 Carrier Member 4/12/88


 S. E. BUEHHEIT,
 Neutral Member