

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1040

Case No. 12

PARTIES: SOO LINE RAILROAD COMPANY

TO :

DISPUTE: BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

STATEMENT OF CLAIM:

Appeal of Claimant Robert G. Kunkel's, Laborer, dismissal on November 25, 1991, for falsifying his original application for employment with the Soo Line Railroad Company.

FINDINGS:

Claimant Robert G. Kunkel was employed by the Carrier as a laborer in Iowa.

On October 25, 1991, the Carrier notified the Claimant to appear for a formal investigation in connection with the following charges:

. . . your alleged falsification of your original application for employment with the Soo Line Railroad.

After one postponement, the hearing took place on November 15, 1991. On November 25, 1991, the Carrier notified the Claimant that he had been found guilty of the charges brought forth against him and was being assessed discipline of dismissal effective that date.

On December 2, 1991, the Claimant appealed his dismissal and requested that this matter be brought before this Board.

This Board has reviewed the evidence and testimony in this case and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of falsifying his original application for employment with the Carrier. The

record reveals that the Claimant had filed a Workmen's Compensation case with a previous employer after having sustained some injuries and yet on his application for employment with the Carrier he indicated that he had never received compensation for an industrial accident, nor had he any serious physical problems in the previous five years.

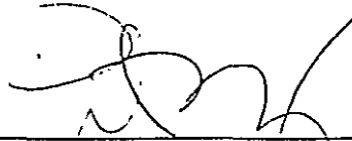
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary, or capricious.

In the case at hand, the Claimant was terminated for falsification of his application for employment. It is not unusual for a Carrier to take such drastic action in this type of a case because if a new employee is not forthright about his previous medical background, he can be assigned work that is too heavy for him to perform and then he might incur even greater injury. If that occurs, the Carrier will be responsible for the injury which may not have occurred had the Claimant been forthright about his previous physical and injury history.

The Claimant in this case had been working for the Carrier for only one year. There is nothing in this record that indicates to this Board that his termination was unreasonable. Therefore, the claim will be denied.

AWARD

Claim denied.



PETER R. MEYERS
Neutral Member_____
Carrier Member_____
Organization Member

Dated: _____