

BEFORE SPECIAL BOARD OF ADJUSTMENT 1040

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
SOO LINE RAILROAD COMPANY - MILWAUKEE

Case No. 20

STATEMENT OF CLAIM:

Appeal of Torren J. Birt's dismissal effective June 30, 1994.

FINDINGS:

This dispute involves Claimant Torren J. Birt, who was employed as a welder helper at the Carrier's Bensenville Yard in Bensenville, Illinois.

On April 4, 1994, Roadmaster Sanchez disqualified the Claimant from his position as welder helper as a result of his alleged failure to obtain a valid driver's license as required by the position.

On June 9, 1994, a formal hearing was held to determine the Claimant's responsibility, if any, in connection with his alleged failure to properly report motor vehicle violations, falsification of documentation, and misuse of the Company's mailing address. At the hearing, the Organization argued that the Company's mailing address was not an issue as the address that the Claimant used during the period in question was owned by another Carrier. As to the other charges, the Organization argued that the Claimant did not deliberately falsify documents or fail to report traffic violations. He simply misunderstood the questions on the Employment Application as only pertaining to his Commercial Driver's License status and not his personal driver's license record.

The Carrier found the Claimant guilty as charged and in a letter dated June 30, 1994, dismissed him from service effective immediately.

The parties not being able to resolve the issue, this matter comes 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 the rule violations with which he was charged. The record is clear that the Claimant's Commercial Driver's License had a restriction indicating that the Claimant was not qualified to operate CDL trucks with air brakes. The record indicates that the Claimant only held a Class B CDL, which allows him to operate trucks in excess of 26,001 pounds.

There is also evidence in the record that although the Claimant indicated on his Employment Application that he had not had any driving offenses in the past three years, his driving abstract shows that he had his license suspended in that period. Also, there were violations that had occurred during the period. The Claimant had been found to be "habitually in violation of vehicle laws."

The Claimant admitted at the hearing that when he filled out his Employment Application, he marked "None" in the box which called for a listing of traffic convictions within the past three years. The Claimant explained this by stating, "... because from the day I started with the Company, CP never questioned or wanted to know anything about my license." In addition, the Claimant admitted that he had answered "No" to the

question if he had ever been denied a license, permit, or privilege to operate a motor vehicle. At the hearing, the Claimant admitted that "No" was not a correct answer.

Given the admissions of the Claimant at the hearing, this Board must find that the Carrier properly found the Claimant guilty of dishonesty in the way in which he completed the Company documentation.

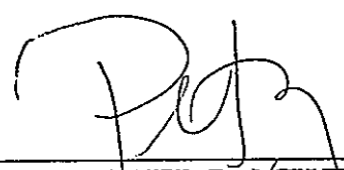
That dishonesty carried over to the Claimant's listing of a phoney home address in an apparent effort to obtain a driver's license.

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.

The Claimant in this case has been found guilty of several acts of dishonesty. This Board has held on numerous occasions in the past that a carrier has a right to expect that its employees will be honest. In this case, Claimant Birt acted dishonestly on several occasions. Given his relatively short seniority and the fact that the Claimant was found guilty of falsifying his Employment Application, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated his employment. Therefore, the claim will be denied.

AWARD

Claim denied.



PETER R. MEYERS
Neutral Member

DATED: 9/1/94