

The Second Division consisted of the regular members and in addition Referee Harold M. Weston when award was rendered.

Parties to Dispute: (International Association of Machinists
(and Aerospace Workers
(
(Burlington Northern Inc.

Dispute: Claim of Employes:

Claim of the International Association of Machinists and Aerospace Workers that:

1. The Carrier improperly removed R. E. Cooper, formerly employed as Machinist in the Roundhouse at Beardstown, Illinois, from service on November 27, 1973.
2. R. E. Cooper be reinstated into the service of the Railway Company with seniority rights unimpaired and paid for all wages lost from November 27, 1973, and each working day thereafter.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimant, a machinist in Carrier's employ since March 23, 1973, was notified by Superintendent Hagen's letter of November 26, 1973, that he was "hereby removed from the service of the Burlington Northern, Inc., account falsification of your work application."

He was terminated without hearing but Carrier contends that under Rule 36, a hearing is not required for an employe who has given false information on his work application, unless he requests one and that Claimant did not comply with that condition. While Rule 35 stipulates that an employe in service more than sixty days will not be disciplined or dismissed until after a fair and impartial investigation has been held, Rule 36 provides that an employment application will be considered approved if not disapproved within sixty days from commencement of service, "unless it is found that false information has been given, in

which event applicant will not be dismissed without an investigation, if he so desires."

Rule 36 manifestly is the specific provision concerning the hearing requirement in cases where false information has been given on work applications and we disagree with Petitioner's theory that Rule 36 comes into play only during the sixty day period following the commencement of employment. The Rule plainly provides that the "applicant" may be dismissed even if the discovery that he submitted false information does not take place until after that sixty day period.

On the other hand, Carrier should certainly accord any claimant who has been in its employ as long as Claimant was, a hearing before terminating his employment, if there is any reasonable indication that he desires a hearing. This principle is sound, not only because it conforms with elementary principles of fair play and avoided an inference that an innocent employe is being removed arbitrarily (see Third Division Award 4391), but also because it is consistent with the requirements of Rule 36.

Claimant's prompt reply to Superintendent Hagen's letter of November 26, 1973, stated that his removal is in violation of Rule 35 and therefore, since that Rule expressly requires a fair and impartial hearing for employes with over sixty days service, put Carrier on notice that Claimant was complaining that no hearing was being held. The fact that Rule 36 rather than Rule 35 is controlling where false information is found to have been given is not material for, as a matter of substance, the point of the complaint is that no hearing was being held. Moreover, Claimant had not been advised as of that time as to what false information had been allegedly given, although he was plainly entitled to those particulars to determine his course of action and rights, and therefore was not in a sound position to determine what procedures should be followed.

In the light of these considerations, Carrier's decision to remove Claimant from service will be set aside and it will be directed to offer him immediate reinstatement to the position he occupied as of the time of his removal with seniority rights unimpaired. There is no evidence that the injury he suffered in previous employments affects his work performance for Carrier. He will not receive back pay, however, since he did erroneously state in his work application that he had not been injured while in the previous employment. He also should have been more forthright in replying to the question, "Have you ever began legal proceedings against any of your employers?" We can understand that some confusion might attend the definition of "legal proceedings" where, as here, Workmen's Compensation is involved, particularly in some States, but he should have divulged all of the information.

A W A R D

Claimant will be offered reinstatement to the position he occupied on November 26, 1973, with seniority rights unimpaired and full employment status, but without back pay.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 13th day of June, 1975.