

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**THIRD DIVISION**

**Edward F. Carter, Referee**

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,  
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES**

**THE PENNSYLVANIA RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood that:

Allone White, Trucker, South Philadelphia Freight Station, Philadelphia Terminal Division, Philadelphia, Pennsylvania, be returned to service with all rights unimpaired and compensated for all monetary loss sustained dating from January 10, 1947, until adjusted. (Docket E-391)

**EMPLOYEES' STATEMENT OF FACTS:** This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes as the representative of the class or craft of employes of which the claimant in this case is a part, and the Pennsylvania Railroad Company (hereinafter referred to as the Brotherhood and the Carrier, respectively.)

There is in effect a Rules Agreement, effective May 1, 1942, covering Clerical, Other Office, Station and Storehouse Employes between the Carrier and the Brotherhood which the Carrier has filed with the National Mediation Board in accordance with Section 5, Third (e) of the Railway Labor Act, and which has also been filed with the National Railroad Adjustment Board.

This dispute was progressed to the General Manager of the Eastern Region of the Carrier by means of a joint submission. The General Manager is the "chief operating officer designated to handle labor disputes". This joint submission is attached as the Employes' Exhibit "A" and will be considered as part of this statement of facts.

The Claimant, Allone White, after filling out his application for employment with the Carrier on September 25, 1946, was immediately hired by the Carrier as a Trucker and assigned to duty at South Philadelphia Freight Station, thereby establishing a seniority date in the seniority district of the Philadelphia Terminal Division on this date in accordance with Rule 3-A-1 of the Clerks' Rules Agreement.

On January 10, 1947, the Claimant was displaced from his position at South Philadelphia Freight Station by a senior employe, on which date he immediately went to the Superintendents' offices of the Philadelphia Terminal Division where a master seniority roster is maintained for the Philadelphia Terminal Division. After consulting with those who are in charge of this master roster, the Claimant found that he had seniority rights to a position of Trucker at Kensington Freight Station, Philadelphia Terminal Division.

conditions". The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties to it. To grant the claim of the Employes in this case would require the Board to disregard the Agreement between the parties thereto and impose upon the Carrier conditions of employment, and obligations with reference thereto, not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take such action.

#### CONCLUSION

The Carrier has shown that, under the applicable Agreement between the parties to this dispute, the Claimant was properly dropped from the service and he is not entitled to reinstatement with compensation for time lost.

It is, therefore, respectfully submitted that the claim is not supported by the applicable Agreement and should be denied.

(Exhibits not reproduced.)

**OPINION OF BOARD:** The Claimant, after investigation in accordance with the Agreement, was dismissed from the service for giving false information in his application for employment. The applicable rule is:

"The application of new employes for employment shall be approved or disapproved within ninety days after applicants begin work.

In the event of applicants giving false information this Rule (5-B-1) shall not apply." Rule 5-B-1, current Agreement.

This Board has held that an employe working during the period reserved to the Carrier to approve or disapprove his application, is a probationary employe and if his application is denied he gains no rights under the Agreement. Awards 3152, 3520. If the probationary period expires without a denial of the application by the Carrier, the employe relationship is ordinarily established. But where the Rule further provides, as it does in the present case, that the Rule shall have no application where false information is given in the application, the probationary period is extended if the giving of false information is established. In determining whether false information was given in the application, where the stated period of probation has expired, the applicant is entitled to an investigation. If this were not true, the Carrier might arbitrarily remove employes from the service on this ground and leave an innocent employe without any recourse whatsoever.

In the present case an investigation was had. The Claimant was present and was the sole witness. The evidence of the Claimant can be summed up by two questions by the interrogator and the answers thereto by Claimant:

"Q. What do you wish to say in reference to this case and reason, if any, why you should not be so charged?"

A. Well, I would say I was at a sick woman's house, and the law came in and found whiskey in her house and I was there. To keep this woman from going to jail I took the rap. I was living at 2235 N. College Avenue and the arrest was made at 1325 N. 21st Street.

Q. At least you say that you did not (fill in the application himself), in which event you would be asked the question as follows: 'Have you ever been indicted for or convicted of any crime?' You certainly should know the meaning of the question and your answer was 'No'.

A. The way I figured this was it was not a crime of mine. I was only helping the sick woman."

The application for employment was not produced at the investigation. The record shows that application was filled in by an employe of the Carrier and not by the Claimant. A fair consideration of the record reveals, however, that Claimant was asked the question "Have you ever been indicted for or convicted of a crime?" and the Claimant answered "No" as charged. The nature of the crime with which Claimant was alleged to have been convicted is described in the Joint Statement of Agreed Upon Facts as follows: "It subsequently developed that the Claimant had been arrested on March 9, 1945, for violation of Penna. Liquor Act, to which charge he pleaded guilty." That Claimant intentionally falsified the answer in question is shown by his evidence that "The way I figured this was it was not a crime of mine." The information concealed was material to the purposes of the application.

The application for employment was made by Claimant on September 25, 1946. The investigation was held on January 16, 1947. The nature of the crime concealed and the duration of time which elapsed prior to the discovery of the false statement, do not warrant the interposing of any theory that the flight of time has alleviated the fraudulent character of the act or lessened the materiality of the information. Under these circumstances, the Board can find no reasonable basis for interfering with the decision of the Carrier.

**FINDINGS:** The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the carrier and the employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

There was no violation of the Agreement.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A. I. Tummon  
Acting Secretary

Dated at Chicago, Illinois, this 28th day of April, 1949.