

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22657
Docket Number W-22725

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**
(
(Maine Central Railroad Company
(Portland Terminal Company

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

(1) The Agreement was violated when **Trackmen** Raymond F. Boies, Michael **Harkins** and Roger D. **Picard** were removed from service on July 27, 1977 (System Files **MW-77-2**; m-77-3; and W-77-4).

(2) The Carrier shall restore Messrs. Boies, ~~Harkins~~ and **Picard** to service and the claimants shall **each be** reimbursed for all **time** lost from July 27, 1977 until they **are reinstated** to service."

OPINION OF BOARD: The Scope **Rule** of **the** applicable collective bargaining Agreement reads in part:

"**RULE** 1. These rules shall govern the hours of service and working conditions of all **employees**, except **Emergency** and Temporary Employees, in **the** Maintenance of Way Department as hereinafter named. Temporary Employees are those working **on** large ballasting or rail laying jobs; **Emergency Employees**, those employed **on** floods, hurricanes, handling snow, etc."

Rule **2(a)** of the Agreement provides:

"**RULE** 2. (a) Seniority of an **Employee** within the scope of this Agreement begins at the time an **Employee's** pay starts in the class in which employed, except that such seniority will not apply until after an **Employee** has worked more **than** thirty (30) consecutive days."

Rule 22(a) of the Agreement reads **in** part:

"**RULE 22.** (a) No **employee**, who **has** worked more than thirty (30) consecutive work days, shall be disciplined or discharged without a fair hearing by a designated officer of the Railroad....."

The record shows that the three claimants were among several temporary **employees** hired on June 13, 1977, in a Maine Central rail gang for rail rehabilitation work under the New England Regional **Commission** Rehabilitation Program, which program was funded by the Federal Government. The rail rehabilitation project was completed **on** June 29, 1977, following which the claimants were transferred to the Tie Crew at **Danville** Junction.. The program at **Danville** Junction was not a part of the rehabilitation project.

Each of the claimants was terminated **on** July 27, 1977, on the basis that their applications were not approved. Following the terminations, claim were initiated and progressed in the usual **manner** by the Organization that each of the claimants be reinstated to service and reimbursed for all time lost from July 27, 1977, until reinstated to their positions as **trackmen**, the Organization alleging that the Carrier violated Rule 22(a) of the Agreement.

While claimants were working on the New England Bail Rehabilitation **Program**, they clearly **came** within the category of 'Temporary **Employees**,' as defined in and excepted from the Scope **Rule** of the Agreement. When they began work on the **Danville** Project on June 30, 1977, the thirty-day provisions of **Rules** 2 and 22 began to count. As **they** were terminated within thirty days of that date, there was no violation of Rule 22(a) by the Carrier. The claim will, therefore, be denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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

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

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD **ADJUSTMENT** BOARD
By Order of Third Division

ATTEST:

A.W. Pauls
Executive **Secretary**

Dated at Chicago, Illinois, this 14th day of December 1979.