

The Third Division consisted of the regular members and in addition Referee Charlotte Gold when award was rendered.

(Brotherhood of Maintenance of Way Employees  
PARTIES TO DISPUTE: (  
(St. Louis Southwestern Railway Company

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

(1) The Carrier violated the Agreement when it removed L. Plummer from service beginning on July 13, 1987 (System File MW-87-39-CB/464-62-A).

(2) The Claimant shall be reinstated with seniority, vacation and all other rights unimpaired. The dismissal letter of July 13, 1987 shall be removed from his record and he shall be allowed seven hundred fifty-two (752) hours at his straight time rate of pay and pay for all overtime worked by the gang to which he was assigned, from July 14, 1987 through November 20, 1987."

FINDINGS:

The Third 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 employes 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.

The Organization maintains that Carrier violated Article 2, Section 4, of the controlling Agreement when it removed Claimant from service on July 13, 1987. Following his furlough as a Track Laborer on the Pine Bluff Division, Claimant sought employment on the Kansas City Division. Carrier notified him, however, that his application had not been accepted and that he was to return all Company material to the Roadmaster.

Claimant had a seniority date of May 20, 1974. Clearly, he was not a new employee when he sought employment on the Kansas City Division. As noted by the General Chairman in his appeal to the Labor Relations Officer on August 26, 1987:

"...we have had St. Louis Southwestern Railway employees work from one seniority district to another seniority district for many years without being considered as new employees. When they are furloughed on their home seniority district and the Company has a need for employees on another seniority district they are allowed to perform service on that district and retain their seniority on their home seniority district."

Given this long-standing practice and the fact that Claimant was apparently an acceptable employee to Carrier on the Pine Bluff Division for a number of years, this Board can find no basis for Carrier's conclusion that he was still in his probationary period in July 1987, when it notified him that his application for employment had been disapproved.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 16th day of October 1989.