

The Third Division consisted of the regular members and in addition Referee George S. Roukis 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 Agreement was violated when the Carrier assigned junior employees T. C. McCarty and B. J. Taylor, instead of Messrs. J. H. Swaim and S. E. Swaim to fill No. 1 Carpenter's positions on B&B Gang 4115 at Tyler, Texas, from December 29, 1986 through March 13, 1987 (System File MW-87-11-CB/53-1003).

(2) As a consequence of the aforesaid violation, Messrs. J. H. Swaim and S. E. Swaim shall each be allowed four hundred forty (440) hours of pay at the No. 1 Carpenter's rate."

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 basic facts of this case are set forth as follows: Carrier notified Claimants on September 5, 1986, that work was available for them in two temporary B & B carpenter positions. Since Claimants were on furloughed status at the time and were working in full time non-railroad jobs, they informed Carrier that they would have to give up full-time employment to accept short-term temporary assignments. Two junior employees were recalled pursuant to Article 3(g) and assigned the temporary positions. The work was performed under an authorization for a Special Building Project, which ran until December 30, 1986. Notices were issued to the employees on December 19, 1986, apprising them that said temporary positions would be abolished on December

30, 1986. Carrier received budget authorization to continue the project for two more months and, accordingly, it re-established the two temporary B & B carpenter positions. Since it was under the impression that Claimants would not accept recall to temporary positions, it assigned the two junior employees to the jobs. The positions later were effectively abolished on March 13, 1987. In the meantime, the Organization filed a Claim on behalf of Claimants on February 24, 1987, wherein it charged that Carrier failed to readvertise the positions as permanent or regular in accordance with the applicable provisions of the Agreement. Specifically, it contended that said jobs were made effective in September 1986, as temporary and never advertised as permanent positions. It also took issue with Carrier's contention that the two B & B carpenter positions were abolished on December 30, 1986. It asserted that Carrier failed to attach the abolishment notice.

Carrier contends that when it assigned the junior employees to the positions in September 1986, said assignments were scheduled to expire in December 1986. It observed that it issued abolishment notices on December 19, 1986, and did so on the understanding that the project would continue until December 30, 1986. When it later received authorization to continue the project for two additional months, it reassigned the two junior employees since Claimants had explicitly rejected temporary employment. It disputes the Organization's position that continuing the two junior employees beyond ninety (90) days amounted de facto to permanent positions, arguing instead that the two jobs were abolished on December 30, 1986.


In considering this case, the Board concurs with Carrier's position. Initially, when the two B & B temporary carpenter positions were available they were first offered to Claimants in accordance with the requirements of Article 3(g). Claimants were employed in full-time non-railroad jobs and apprised Carrier that they did not want to relinquish full-time jobs for temporary work. There were no indications at the time the junior employees were recalled from furlough status, that the assignments were other than temporary, and the positions were effectively abolished on December 30, 1986. On December 29, 1986, when Carrier reestablished two temporary carpenter positions, predicated upon an extension of the funding for the Special Building Project, the two junior employees were assigned to the positions. At first glance it appears like an unbroken continuation of employment, but there was a distinct break in the assignments. We have no evidence that the Special Building Project was not going to expire on December 30, 1986, and Carrier's abolishment notice, dated December 19, 1986, reflects this expectation. Shortly thereafter, when the Special Building Project was continued, the December 29, 1986 Bulletin of Advertisement (#2-86) announced temporary positions and said positions were assigned to the junior employees. Since Claimants clearly indicated they would only return to permanent positions, it was not improper for Carrier to offer the temporary work to the junior employees. The positions were effectively abolished on March 13, 1987.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 27th day of September 1990.