

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 30717
Docket No. MW-30573
95-3-92-3-328

The Third Division consisted of the regular members and in addition Referee W. Gary Vause when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
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(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 improperly removed Mr. S. E. Swaim's name from the applicable 1991 B&B District 2 Seniority Roster (System File MW-91-28-CB/500-67-A).
- (2) The Carrier shall allow Mr. S.E. Swaim's seniority to be extended and his name returned to the applicable District 2 B&B Seniority Roster."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

On September 9, 1970, Claimant was employed with Carrier as a Carpenter. On or about May 16, 1986, Claimant was placed in a furloughed status, and did not return to service since that date. When the Carrier published the B&B seniority rosters for 1991, the Claimant's name was removed therefrom.

The Carrier argues that the Claimant's failure to return to active service within four years results in the expiration of all seniority rights. Because the Claimant had not been employed since May 16, 1986, his name was properly removed from all seniority rosters as provided under Article 3, Section (g) of the current Agreement, which states in pertinent part:

"(g) When forces are increased, or in filling temporary vacancies, senior laid off employees in their respective rank, seniority group and seniority district will be given preference in employment. Employees desiring to avail themselves of this privilege and retain their seniority rights must file their name and address in writing with the appropriate division officer, with copy to District Chairman, within ten (10) calendar days of the date laid off, and renew same if address is changed during the period laid off. Failure to return to the service within ten (10) calendar days after being notified (by mail or telegram to last known address) will forfeit all seniority rights. Extension of seniority rights under this rule will expire unless returned to active service within four (4) years." [Emphasis added.]

The Carrier's position is supported by the literal language of Article 3, Section (g). However, the Organization argues that the Carrier failed to recall the Claimant to service so that it would be in the position of removing his name from the seniority roster. The Organization also asserts that due to the number of Agreement violations against the Claimant in the past, and payments the Claimant received in settlement of those claims, the Carrier cannot rely upon Article 3, Section (g) to remove the Claimant's name from the seniority roster.

The record reflects that the payments made to the Claimant, and referenced by the Organization in its Submission, were the result of settlements negotiated between the Carrier and the Organization. The parties agreed that such payments were "without prejudice" to the position of either party, and would not be referred to in the handling of any cases.

More importantly, Article 3, Section (g) does not contain any provision which operates to extend seniority because a Claimant is paid monies based on claims brought by the Organization.

The facts of this case show that the Claimant's seniority rights expired because he was not "... returned to active service within four (4) years" as prescribed in Article 3, Section (g) of the Agreement.

AWARD

Claim denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 31st day of January 1995.