

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22657
Docket Number MW-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; MW-77-3; and MW-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 employe, 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 employes 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, claims 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 Rail Rehabilitation Program, they clearly came within the category of "Temporary Employes," 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.