

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 31220  
Docket No. MW-31800  
95-3-94-3-91

The Third Division consisted of the regular members and in addition Referee Robert L. Hicks when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes  
(  
(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 B&B Carpenter K.S. Culpepper to fill a carpenter foreman position at Tyler, Texas, instead of recalling and assigning furloughed B&B Carpenter S.E. Swaim who was senior, available and willing to be assigned thereto (System File MW-93-6-CB/MW 93-31).
- (2) As a consequence of the violation referred to in Part (1) above, Mr. S.E. Swaim shall be allowed seniority as a carpenter foreman beginning as of the date the junior employee was recalled to duty and assigned to the foreman's position (January 25, 1993) and he shall be compensated at the carpenter foreman's rate for all lost wages beginning January 25, 1993 and continuing until he is assigned to said position."

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.

Claimant was not recalled for the Foreman's position at Tyler, Texas, as he had no seniority standing, having lost same in 1990 pursuant to Article 3, Section (g) of the Agreement which reads, in pertinent part:

"\*\*\* Extension of seniority rights under this rule will expire unless returned to active service within four (4) years."

The loss of Claimant's seniority has been a subject of another dispute advanced to this Board. See Third Division Award 30717 (which denied the Organization's claim in that case) and the Awards cited therein.

The issue now before the Board is moot.

AWARD

Claim dismissed.

ORDER

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 1st day of November 1995.