

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 32022  
Docket No. MW-32217  
97-3-95-3-19**

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

**(Brotherhood of Maintenance of Way Employees  
PARTIES TO DISPUTE: (  
(Terminal Railroad Association of St. Louis**

**STATEMENT OF CLAIM:**

**"Claim of the System Committee of the Brotherhood that:**

- (1) The Agreement was violated when the Carrier improperly terminated the seniority of Mr. J. C. King from the Bridge and Building and Track Department Seniority Rosters by letters dated November 11 and 15, 1993 (System File 1993-42/013-293-15).**
- (2) As a consequence of the violation referred to in Part (1) above, the Claimant's seniority shall be reinstated with all other rights unimpaired and he shall be compensated for all wage loss suffered as a result of the Carrier's actions beginning November 11 and/or 15, 1993 and continuing until he is returned to service and/or his seniority is reinstated."**

**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 were given due notice of hearing thereon.

On April 9, 1991, Claimant established seniority in Carrier's Bridge and Building (B&B) Subdepartment. It is unrefuted that Claimant had been on furlough status for a period of 365 days and had less than three years' seniority at the time this dispute arose. It is the position of the Organization that the Carrier precipitated his being on furlough by contracting out B&B work in violation of the Agreement. The Organization cites Third Division Award 31346 in support of its position. In that Award, the Board held that Carrier had violated the Agreement when it contracted out B&B work beginning on December 5, 1991. Claimant was one of the employees who received compensation for the days worked by the contractor (December 5, 1991 through January 8, 1992). The Organization contends that in view of Award 31346 and subsequent occurrences of Carrier contracting out B&B work, Claimant should not have been subject to furlough.

The Carrier maintains that even allowing for the compensation awarded by the Board in the aforementioned Award, Claimant would have legitimately been terminated under the self-executing provisions of Article IV of the October 17, 1986 National Agreement. Article IV reads in pertinent part as follows:

“...The seniority of any employee whose seniority under an agreement with BMW is established after the date of this Agreement and who is furloughed for 365 consecutive days will be terminated if such employee has less than three (3) years of seniority....”

The Carrier is correct that Article IV is self-executing. An employee with less than three years' seniority who has been furloughed for more than 365 days will be terminated by Carrier. However, the Organization has asserted that the Carrier “greased the skids” by erroneously contracting out work for which Claimant would have been eligible. The Board finds no showing on this record beyond conjecture by the Organization to demonstrate that Carrier precipitated Claimant's termination through violations of the Agreement. None of the five alleged violations has been supported.

In light of the foregoing, even accounting for the time between December 5, 1991 and January 8, 1992 for which Claimant was compensated as a result of Award 31346, Claimant had less than three years' seniority (from April 4, 1991 to November 11, 1993) and had been furloughed for more than 365 days. Thus, under the provisions of Article

IV, the Carrier legitimately terminated him from service. (See Third Division Awards 23287, 26841, and 23931.)

**AWARD**

Claim denied.

**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 6th day of May 1997.