

Award No. 4017

Docket No. 3949

2-PRR-MA-'62

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Charles W. Anrod when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 152, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O. (Machinists)**

THE PENNSYLVANIA RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current Agreement the Carrier unjustly deprived demoted machinist W. R. Shelow the right to be assigned to Job No. 253, temporarily, first trick, Machinist Shop No. 1, when the permanent owner of the job was off sick with a heart attack.

2. That accordingly the Carrier be ordered to compensate demoted machinist W. R. Shelow the difference between Machinist Helper Grade "P" rate of pay and Machinist Grade "E" rate of pay for January 19, 20, 21, 22, 25, 26, 27, 28, 29 and February 1, 1960.

EMPLOYEES' STATEMENT OF FACTS: W. R. Shelow, hereinafter referred to as the claimant, is employed as a machinist helper, first trick, in Machine Shop No. 1, with a work week of Monday through Friday with Saturday and Sunday as rest days, by the Pennsylvania Railroad Company, hereinafter referred to as the carrier, Locomotive Shops, Heavy Repair Shops, Altoona, Pennsylvania.

Claimant has been employed by the carrier since May 28, 1923, when he entered the service of the carrier and has been employed continually since that date.

On Monday January 11, 1960, T. M. Lee, machinist, employed in Machine Shop No. 1, became ill resulting in Mr. Lee having to be taken home. His wife and daughter were called and they came to the Second Street Shop Gate and took him home at which time Doctor John Ronan was called to the Lee home to examine Mr. Lee. Doctor Ronan stated that he had a severe heart attack and that he was having him admitted to the hospital immediately.

CONCLUSION

The carrier has conclusively shown that there has been no violation of the applicable Agreement in the instant case and that the employees' claim is without merit.

Therefore, the carrier respectfully submits that your Honorable Board should deny the claim of the organization in this matter.

FINDINGS: The Second 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 employe 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.

Machinist T. M. Lee was employed at the Carrier's Altoona (Pennsylvania) Heavy Repair Shops and held machinist position No. 253. On Monday, January 11, 1960, he became ill during working hours and was taken home by members of his family. His illness was diagnosed by a physician as a heart attack and he was transferred to a hospital where he remained for about three weeks. Since he was over 65 years of age, he did not return to work but retired in July, 1960.

Lee's position was advertised as a temporary vacancy on February 2, 1960, and awarded to H. T. Patterson, effective as of February 15, 1960.

The claimant, W. R. Shelow, who was employed as a Machinist Helper in said Shops at the time Lee became ill, contends that the latter's position should have been advertised within five working days from January 11, 1960, and that he was next in line to be awarded it on a temporary basis. He requests compensation consisting of the difference between his rate of pay and that of Lee's for eight hours on each of ten specified days from January 19 through February 1, 1960.

In support of his request, the Claimant relies on Rule 2-A-1(b) of the applicable labor agreement which reads, as far as pertinent, as follows:

" . . . all vacancies, including temporary vacancies known to be of thirty (30) calendar days or more duration, will be advertised within five (5) working days from the date they occur . . ." (Emphasis supplied).

The Rule clearly and unambiguously provides that a temporary vacancy must be advertised within five working days after it is "known" that it will be of at least thirty days' duration. Stated differently, the Carrier is not required under the Rule to advertise a temporary vacancy until it recognizes as a definite fact that the vacancy will last thirty or more days.

A critical examination of the evidence considered on the record as a whole has failed to convince us that the Carrier positively knew on January

11, 1960, that Lee's illness would last thirty or more days. The fact that Lee suffered a heart attack and was given oxygen in the hospital, standing alone, does not necessarily prove that the Carrier knew for certain that he would be incapacitated for at least thirty days. See: Awards 3681 and 3683 of the Second Division. Our attention has not been called to a medical report or any other relevant evidence from which we could conclude that Lee's heart attack was of such severity as positively to demonstrate to the Carrier on January 11, 1960, that he would be absent from work for thirty days or more. As a result, the Carrier's contention that the Foreman had no definite knowledge until about January 28, 1960, that Lee's physical condition would necessitate an absence of thirty days or more stands uncontroverted. The best that can be said in favor of the Claimant is that the Carrier could perhaps have assumed or suspected on January 11, 1960, that Lee would not return to work within thirty days. A mere assumption or suspicion is inadequate to start the five-day advertising period.

Since Lee's position was properly advertised within five working days from January 28, 1960, we are unable to make a finding to the effect that the Carrier violated Rule 2-A-1(b) of the labor agreement as charged by the Claimant.

For the above stated reasons it becomes unnecessary to rule on the Carrier's further arguments that we express no opinion on the validity thereof.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 29th day of June 1962.