

Award No. 1676

Docket No. 1569

2-PRR-MA-'53

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Edward F. Carter when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION No. 152, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Machinists)**

THE PENNSYLVANIA RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreement Machinist Helper Anna W. Farren has been unjustly deprived of her service rights in the Engine House at Shire Oaks, Pennsylvania on and subsequent to March 6, 1950.

2. That accordingly the Carrier be ordered to restore this employe to service with compensation for all time lost retroactive to the aforesaid date.

EMPLOYES' STATEMENT OF FACTS: Machinist Helper Anna W. Farren, hereinafter referred to as the claimant, was employed as such by the carrier on March 15, 1943, in the enginehouse at Shire Oaks, Pennsylvania, and, accordingly, she established seniority as of March 15, 1943, as a machinist helper on the Shire Oaks enginehouse seniority district roster maintained for the craft of machinists.

The claimant held a regular assignment at this enginehouse with a tour of duty which consisted of oiling and sponging engine and tender truck boxes, alighting and filling lubricators and rod cups until she was furloughed in a force reduction on January 30, 1950. Nevertheless, the carrier began to use K. K. Parsons to perform machinist helpers' work beginning on March 6 through 17, 1950, although he was not eligible to be so used in preference to this furloughed claimant. This is affirmed by copy of letters dated March 21, 1950 and April 3, 1950, submitted herewith and identified as Exhibits A and A-1.

The carrier consequently recalled the claimant for service on March 10, 1950, but she was not permitted to begin work until Monday, March 20, and even then she was disqualified on the very same day because she worked about five and one-half (5½) hours at performing the assignment of renewing the grease in No. 1 and No. 5 driving boxes, which is affirmed by copy of letter dated April 20, 1950, from the enginehouse foreman to the claimant submitted herewith and identified as Exhibit B. This disqualification was protested and the carrier finally returned the claimant to duty on April 26, 1950.

machinist helper positions, the carrier was not required by the agreement to recall furloughed machinist helpers to fill such vacancies; that the carrier always had the right to step rate employes in the manner here questioned by the employes; that various rules of the agreement reflect this right and that any interpretation of the agreement which would result in its application in the manner here contended by the employes would not only be unreasonable and impracticable, but would be at variance with the meaning and intent of the agreement and also the practice of many years on the property.

In connection with Item 2 dealing with the question of the claimant's disqualification as a machinist helper, the carrier has shown that the claimant is not qualified to perform the work of a machinist helper; that the disqualification of the claimant was proper; that such action was not arbitrary, malicious, unreasonable or in bad faith; that such action was not in conflict with any provisions of the applicable agreement; that the employes have not presented any competent evidence to show conclusively that the claimant was qualified; that the employes' charges that the carrier's action was discriminatory are wholly unfounded and that so long as the carrier acts reasonably and in good faith in determining the question of an employee's fitness, your Honorable Board should not interfere.

Since the claim for compensation in this case is dependent upon a finding that the claims in Item 1 and Item 2 are well-founded and since the carrier has shown such claims to be without merit, it follows that the claim for compensation is also without merit, and should be denied.

III. Under the Railway Labor Act, the National Railroad Adjustment Board Second Division, is Required to Give Effect to the Said Agreement and to Decide the Present Dispute in Accordance Therewith.....

It is respectfully submitted that the National Railroad Adjustment Board, Second Division, is required by the Railway Labor Act to give effect to the said agreements, which constitute the applicable agreements between the parties, and to decide the present dispute in accordance therewith.

Therefore, the carrier respectfully submits that your Honorable Board should dismiss the claim of the employes 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.

The parties to said dispute were given due notice of hearing thereon.

Claimant was a machinist's helper in the enginehouse at Shire Oaks, Pennsylvania, having established seniority as such on March 15, 1943. Claimant was furloughed on January 30, 1950, and recalled on March 9, 1950, for service on March 20, 1950. She was disqualified for service on that day because of inability to do the work of a machinist's helper. Through an arrangement with the organization claimant was returned to service on April 26, 1950. On May 29, 1950, claimant was again disqualified because of inability to perform the work of a machinist's helper. The claim is for restoration to service with seniority rights unimpaired and for compensation for all time lost retroactive from March 6, 1950.

Claimant contends that she should have been called for work on certain specified days between March 6, 1950 and March 20, 1950. The work was

performed by one Parsons, an employe junior to claimant in seniority who was working in a lower class of work. The carrier asserts that this work consisted of the filling of day to day temporary vacancies in regularly assigned machinist helper positions. The organization has not sustained its claim to the contrary by proof. It was clearly the practice to step rate qualified available employes in order of seniority at the location where the vacancy exists. A furloughed employe is ordinarily not available for these day to day temporary vacancies and consequently he is in no position to assert his seniority to such positions as against a junior qualified employe working in a lower class or craft. This part of the claim is not sustainable under the agreement.

With respect to the matter of claimant's disqualification, the record shows that on March 20, 1950 she was returned to work as a machinist's helper and was assigned to renew grease in locomotive driving box cellars. This involved the removal of two nuts which hold the cellar plate, the removal of the plate, cleaning the plate, renewing the grease in the cellar box, and reassembly. The record supports the finding that she was inept at this work and used an excessive amount of time completing it. She was disqualified at that time. After a protest by the local chairman, an arrangement was made whereby she was put back to work. It appears that she was assigned as helper to several different machinists who, because of the heavy nature of the work assigned to her, felt that it was too heavy for a female employe, particularly the claimant, and stated that she was not a qualified machinist's helper.

The record shows that for several years claimant held a regular assignment the main duties of which were the oiling and sponging of engine and tender truck boxes, alemiting, and filling lubricators and rod cups. She held this position until she was furloughed on January 30, 1950. At the time she was returned to duty on April 26, 1950, a similar position was held by an employe junior to claimant. Instead of recognizing claimant's seniority and permitting her to displace this junior employe, she was assigned to assist several different machinists on jobs of a heavy nature and beyond the capacity of claimant to perform. It appears that carrier was requiring claimant to perform any and all kinds of machinist helpers work in order to qualify as a machinist helper. This is not in accordance with the agreement. Claimant was entitled to work any machinist helper position which her seniority entitled her to possess. If she was able to perform the duties of that position she was not subject to disqualification. If and when she should be displaced by a senior employe, she would then be required to qualify for some other position to which her seniority entitled her and, upon her failure to do so, she would then be subject to disqualification. But we know of no rule or practice that requires an employe to qualify for positions other than those which she elects to hold and to which her seniority entitles her.

The carrier asserts, however, that the arrangement by which claimant was returned to work on April 26, 1950, consisted of an agreement with the local committee that she should work on various machinist helper positions subject to observation as to her qualifications by representatives of the organization and management. The organization contends that the understanding was that claimant was to be returned to the oiler position and there be observed as to her ability to perform the work. The facts are that claimant was returned to the oiler position for about three days and then she was moved from one machinist's helper job to another as heretofore stated. In any event, there is a direct conflict in the record as to the substance of the understanding. The burden is upon the carrier to justify its improper assigning of claimant by establishing the special agreement under which it purported to act. This it has failed to do by a preponderance of the evidence. Consequently, we are required to say that the carrier violated the agreement in failing to assign claimant to the oiler position which, so far as the record shows, she had the qualifications to fill. The carrier acted in violation of the agreement in disqualifying claimant on work which she

could not at the time be required to perform because of an existing position for which she was qualified and to which she was entitled by seniority.

Claimant is entitled to be restored to service with seniority unimpaired and assigned to any machinist helper's position for which she is qualified and to which she is entitled by seniority. She is entitled to be compensated for time lost from May 29, 1950, until reinstated, less all compensation earned in outside employment.

AWARD

Claim sustained per findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 19th day of May, 1953.