

Award No. 2043
Docket No. 1900
2-PRR-TWUOA, CIO-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee David R. Douglass when the award was rendered.

PARTIES TO DISPUTE:

**TRANSPORT WORKERS UNION OF AMERICA, C. I. O.
RAILROAD DIVISION**

THE PENNSYLVANIA RAILROAD COMPANY—Eastern Region

DISPUTE: CLAIM OF EMPLOYEES: (1) That under the current Agreement the Carrier improperly assigned junior Electricians to fill a vacation position.

(2) That accordingly the Carrier be ordered to additionally compensate John J. Sullivan at the punitive Electrician's rate eight (8) hours each of the following days: October 6, 9, 10, 14, 15 and 17, 1952.

EMPLOYEES' STATEMENT OF FACTS: There is an agreement between the parties hereto, dated September 1, 1946; revised July 1, 1949 and subsequent amendments, copies of which are on file with the Board as is by reference hereto, made a part of this statement of facts.

At Newark Bay Bridge, New York Division, Eastern Region, the Pennsylvania Railroad Company herein referred to as the carrier, employs a force of electricians.

John J. Sullivan is employed as an electrician at the seniority point in question, and will hereinafter be referred to as the claimant.

The claimant is regularly assigned as an electrician, Newark Bay Bridge, first trick, rest days Thursday and Friday.

Edmund Funk is regularly assigned as an electrician, Newark Bay Bridge, second trick, rest days Saturday and Sunday. He observed his vacation October 6, 9, 10, 14, 15 and 17, 1952.

The carrier filled the vacation position of Edmund Funk with the three employees, junior to the claimant on a rotating basis.

There is an agreement governing the distribution of overtime, and this agreement specifies under what circumstances this agreement is applicable. A copy of this agreement is submitted herewith and identified as employees Exhibit A.

This dispute was processed on the property of the carrier—as provided for in the controlling agreement—up to the general manager, the highest

cian position was vacant pending return of the regular incumbent from vacation there was no qualified employe, with or without mechanic's seniority, available on the second trick whom the carrier could have step-rated to fill the vacancy in such electrician position at straight time rates.

The carrier understands that the employes agree that this claim in no way attempts to limit the carrier's right to fill vacation or other vacancies at straight time rates when it has the right to do so under the provisions of Regulation 2-A-4, as interpreted by the parties and by your Honorable Board; under the provisions of 9-A-1 (p), or under any other provision of the applicable agreement. The present claim arose only because none of the alternatives open to the carrier in the filling of vacancies at straight time rates could be met in this case. It is only in such circumstances that the overtime agreement is applicable and no right to work overtime arises in any situation where the carrier can properly perform the work at straight time rates, or can leave it unperformed.

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.

The record indicates that it became necessary to fill a position of a vacationing employe with a regularly assigned employe. This, of course, meant that the position so filled required the payment at overtime rate since there was no available employe qualified who could perform the work at straight time rate of pay.

The claimant was the senior man of those available qualified employes and it is his contention that he should have been used each day at the overtime rate.

It is the opinion of this Board that in light of Regulation 9-A-1(p) of the agreement, considered along with the wording of paragraph 2 of the local overtime agreement that the instant claim must be sustained insofar as claimant should have been used to fill the position in question. This should be at the straight time rate of pay for work not performed.

Paragraph 2 of the "overtime agreement" has reference to the furnishing of relief, on an overtime basis, when certain foreseeable temporary **vacancies** occur and when the employe absenting himself gives notice of not less than 24 hours.

Regulation 9-A-1(p) specifies that absences of employes from duty while on vacation shall not constitute "vacancies" in their positions. This same Regulation 9-A-1(p) further provides that "when the position of a vacationing employe is to be filled and regular relief employe is not utilized, effort will be made to observe the principle of seniority in filling the position."

Thus it is our opinion that Regulation 9-A-1(p) means that seniority should be considered and observed. The regulation does not limit the observation of seniority to instances when the position can be filled without the necessity of the payment at overtime rates. We believe that the observation of seniority extends to employes to whom overtime rates are payable when the carrier fills the position from that category.

It is our conclusion that the "overtime agreement" does not apply in the instant case. In the event a more equitable method of distributing such premium pay work is desired so that several employes may share, such change must be by negotiation of the parties.

AWARD

Claim sustained at straight time rate of pay.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 18th day of January, 1956.