Award No. 2216
Docket No. 1942
2-PRR-MA-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

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

PENNSYLVANIA RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the controlling Agreement the Carrier improperly disqualified Machinist T. C. Back, Sr. on May 25, 1953, thereby denying him the right to exercise his seniority to a position held by a Machinist junior to him.

2. That the Carrier be ordered, in accordance with the controlling Agreement, to assign Machinist T. C. Back, Sr. to the position designated by him in the exercise of his seniority.

3. That the Carrier be ordered to compensate him at the Grade "C" Machinist straight-time rate of pay for all time lost retroactive to May 25, 1953.

EMPLOYES' STATEMENT OF FACTS:

JOINT STATEMENT OF AGREED UPON FACTS, AS AGREED TO ON THE PROPERTY BETWEEN BOTH PARTIES:

On May 15, 1953, Mr. T. C. Back, Sr. was notified by shop bulletin that his position would be abolished effective May 18, 1953. On May 22, 1953, Machinist Back, seniority date June 19, 1923, attempted to exercise his seniority in accordance with Rule 3-D-4 over junior mechanic, A. E. Senft, seniority date—October 1, 1929. By letter of the diesel shop foreman, dated May 22, 1953, the request of Mr. Back was denied. A copy of this letter is submitted herewith and identified as "Statement of Facts Exhibit" and incorporated into the joint statement of agreed-upon-facts.

On June 10, 1953, the employes made claim for the Grade C rate of pay for Mr. Back for all days he was held off the position to which he attempted to exercise his seniority.

to disregard the agreement between the parties, hereinbefore referred to, and impose upon the carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to the applicable agreement. The Board has no jurisdiction or authority to take any such action.

CONCLUSION

The carrier has shown that its refusal to assign the claimant to the machinist position in question on the basis that he was not qualified was in accordance with the provisions of the applicable agreement; that the claimant elected to sever his employment relationship with the carrier; and that he is not entitled to the compensation which he claims.

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.

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

Claimant was a machinist at carrier's shops in Columbus, Ohio. From June, 1923 until November, 1952, his primary work was the operation of a slotter machine in the Machine Shop. On November 10, 1952, he was assigned to supervise assigned and common laborers in the Diesel Shop. On May 18, 1953, the latter position was abolished and claimant endeavored to displace Machinist A. E. Senft, an employe junior in seniority to him. Claimant was denied the position for the reason that he was not qualified. The organization contends that claimant should have been given the job and an opportunity to qualify.

The portions of the rules primarily involved are:

> "Employes whose positions are abolished may, within five (5) days after being notified that their positions are abolished, exercise their seniority over junior employes of the same craft or class, subject to Rule 3-B-3." Rule 3-D-4, current agreement.
>
> "Positions will be awarded by the designated official in accordance with seniority, fitness and ability." Rule 3-B-3, current agreement.

It is the contention of the organization that claimant should have been permitted to displace Senft and an opportunity afforded to prove his qualifications. The carrier's contentions are that the duties of the position in question are the repair, adjustment and testing under simulated operating conditions of speed control governors of Diesel locomotives; that experience and skill are required which claimant did not possess; and that, claimant not being qualified, carrier could refuse to assign him to the position.

It appears from the record that carrier failed to handle the claim in accordance with Rule 4-0-1(g), current agreement. That rule provides:

> "When a claim for compensation alleged to be due has been listed for discussion with the Superintendent in accordance with paragraph (f) of this Rule (4-0-1) and is not allowed, the employe (or a duly accredited representative) shall be notified to this effect, in writing,

within forty-five (45) calendar days from the date his claim was discussed with the Superintendent. When not so notified, claim shall be allowed."

Under the foregoing rule, the claim stood sustained forty-five (45) days after September 3, 1953, the date the final conference appears to have been held.

It appears from the record that claimant was recalled from his furlough status on October 9, 1953 and October 19, 1953. Claimant did not report and was dropped from the service in accordance with Rule 3-D-7. It is the contention of claimant that he was not a furloughed employe during the time he was denied the right to displace Senft. In this he is in error. He remained in an employe relationship with the carrier and was subject to its instructions and the rules of the agreement. We have said many times that an employe may not place his own interpretation upon a rule and refuse to follow the instructions of the carrier. His remedy is provided by the agreement,—the filing and progressing of a proper claim. Consequently when claimant failed to report when recalled from furlough, he was properly dropped from the service under Rule 3-D-7. This had the effect of terminating his running claim against the carrier.

In a case such as we have before us, it is the duty of the employe when he has been denied a position, wrongfully or otherwise, to displace a junior employe when displacement is possible. If he remains on the furloughed list, he must report on recall or be dropped from the service. In other words, he is required to mitigate the loss resulting from carrier's violation of the rules, if it be found to be such, by accepting any work the agreement gives him. He may not assume that he is "locked out" of the position for which he was disqualified and build up his claim against the carrier. He must perform the work available to him and in the event of a violation, the carrier will be required to make him whole by paying the difference between what he earned and what he would have earned but for the violation.

Claim (1) will be sustained for the reasons stated in the opinion. Claim (2) is denied for the reason that claimant was properly dropped from the service pursuant to Rule 3-D-7. Claim (3) is sustained from May 25, 1953, to the date claimant was dropped from the service, less what he would have earned on any positions made available to him during this period.

AWARD

Claim (1) sustained per findings.

Claim (2) denied per findings.

Claim (3) sustained as limited by findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 6th day of August, 1956.

CONCURRING OPINION TO AWARD NO. 2216

The Labor Members concur in part with the Opinion of Referee Carter but believe that, inasmuch as the duly accredited representative of the claimant was not notified by the Superintendent that his claim had not been allowed, the instant claim should have been allowed in its entirety in accordance with the terms of Rule 4-0-1 (g):

"When a claim for compensation alleged to be due has been listed for discussion with the Superintendent in accordance with paragraph (f) of this Rule (4-0-1) and is not allowed, the employe (or a duly accredited representative) shall be notified to this effect, in writing, within forty-five (45) calendar days from the date his claim was discussed with the Superintendent. **When not so notified, claim shall be allowed."** (Emphasis ours).

George Wright
R. W. Blake
Charles E. Goodlin
T. E. Losey
Edward W. Wiesner