

Award No. 2414

Docket No. 2225

2-PRR-MA-'57

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Dudley E. Whiting when the award was rendered.

PARTIES TO DISPUTE:

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

THE PENNSYLVANIA RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the controlling Agreement the Carrier improperly denied Machinist A. J. Bressler the right to exercise his seniority to a position held by a Machinist junior to him.

2. That, accordingly, the Carrier be ordered, in accordance with the controlling Agreement, to assign Machinist A. J. Bressler to the position designated by him in the exercise of his seniority.

EMPLOYEES' STATEMENT OF FACTS: A. J. Bressler, hereinafter referred to as the claimant, is employed by the Pennsylvania Railroad Company, hereinafter referred to as the carrier, as a machinist, with a seniority date of October 24, 1942, at Harrisburg, Pennsylvania.

On August 20, 1953, the claimant was notified that his position was abolished and he elected to exercise his seniority on Machinist E. O. Cook, a junior machinist, with a seniority date of July 9, 1945. Machinist Cook's assignment included the operation of the viscosimeter testing machine.

The foreman refused to permit the claimant, the senior machinist, to displace Machinist E. O. Cook on the operation of the viscosimeter testing machine.

This dispute has been handled with the foreman, master mechanic and superintendent by the local chairman and denied in each step.

On March 25, 1954, the general chairman wrote the general manager, docketing the case for discussion at the regular meeting scheduled for April 14, 1954. Under date of April 26, 1954, the general manager wrote the general chairman denying the protest.

The agreement effective April 1, 1952, as it has been subsequently amended, is controlling.

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 agreement, which constitutes the applicable agreement between this carrier and the Railway Employees' Department, A. F. of L., System Federation No. 152, and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, subsection (i), confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules and working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties to it. To grant the claim of the organization in this case would require the Board 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 such action.

CONCLUSION

The carrier has established that claimant did not possess the requisite fitness and ability for the machinist position in question, and that as a consequence thereof his request to exercise his seniority to such position properly was rejected by the carrier.

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 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.

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

Claimant's position was abolished August 20, 1953 and he elected to displace a junior machinist who, as a part of his regular duties, operated a viscosimeter testing machine. He was not permitted to do so, on the basis that he lacked the qualifications for operation of that machine.

Rule 3-D-4 provides that the exercise of such displacement right is subject to Rule 3-B-3, which provides:

"Positions shall be awarded by the designated official in accordance with seniority, fitness and ability."

It is shown that carrier's instructions provided that an employee must have taken the course of instructions and passed the examination upon proper operation of viscosimeter testing machines, given by Carrier's Engineer of Tests, to be eligible to operate such a machine. Claimant was afforded the opportunity to qualify but did not do so.

The employees contend that Rule 3-D-5 requires that an employee be given an opportunity to qualify on the job. That rule provides no right to

be assigned to a position but deals with failure to qualify after assignment. Rule 3-B-3 governs the claimant's right to be assigned to the position he chose. Under the circumstances here shown that rule was not violated.

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 March, 1957.