Award No. 2415
Docket No. 2226
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 EMPLOYES' DEPARTMENT, A. F. of L. (Machinists)

THE PENNSYLVANIA RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the controlling Agreement the Carrier improperly denied Machinist R. K. Tolbert 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 R. K. Tolbert to the position designated by him in the exercise of his seniority.

EMPLOYES' STATEMENT OF FACTS: R. K. Tolbert, 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 December 6, 1943, 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 D. R. Bower, a junior machinist, with a seniority date of October 15, 1948. Machinist Bower's assignment included the operation of a Magnaflux Testing Machine, "A" trick, Harrisburg, Diesel Enginehouse.

The foreman refused to permit the claimant to displace Machinist Bower on the magnaflux machine.

On August 28, 1953, the claimant wrote the foreman protesting not being permitted to exercise his seniority on the position held by D. R. Bower. The case was then turned over to the local chairman for handling with the master mechanic and superintendent and denied in each step, after which it was turned over to the general chairman for handling with the general manager, the highest officer of the carrier for handling grievances.

On March 25, 1954 the general chairman wrote the general manager docketing the case for discussion for the regular scheduled meeting Wednesday, April 14, 1954, discussion was held at this meeting and on May 5, 1954

ant's request to exercise his seniority to the machinist position in question was entirely proper, and was not in any way arbitrary, capricious or in bad faith.

The carrier submits, therefore, that the employes' claim which is to the effect that "the Carrier be ordered, in accordance with the controlling Agreement, to assign Machinist R. K. Tolbert to the position designated by him in the exercise of his seniority", 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 agreement, which constitutes the applicable agreement between this carrier and the Railway Employes' 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 any 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 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'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 magnaflux testing device. He was not permitted to do so, on the basis that he lacked the qualifications for operation of that device.

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 appears that carrier's instructions required that an employe complete a course of training in magnaflux testing, given by the Engineer of Tests, and obtain approval of the medical examiner upon eyesight requirements, to be eligible to operate such a device. Claimant was afforded the opportunity to so qualify but did not do so.

The employes contend that Rule 3-D-5 requires that an employe 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.