

Award No. 2805

Docket No. 2710

2-PRR-BK-'58

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Livingston Smith when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 152, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO (Blacksmiths)**

THE PENNSYLVANIA RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement the Carrier improperly upgraded J. J. Matasick to perform the duties of Blacksmith Welder on January 30, February 6 and 20, 1956, and subsequent dates.

2. That, accordingly, the Carrier be ordered to compensate M. J. Schroeder at the punitive Blacksmiths' rate of pay for eight (8) hours on each date of January 30, February 6 and 20, 1956, and all subsequent dates.

EMPLOYES' STATEMENT OF FACTS: M. J. Schroeder, hereinafter referred to as the claimant, was employed by the Pennsylvania Railroad Company, hereinafter referred to as the carrier, at Conway Enginehouse (formerly Eastern Division, now the Lake Region). Claimant was regularly assigned as a blacksmith welder with tour of duty from 7:00 A.M. to 3:00 P.M. Tuesday through Saturday, with Sunday and Monday as rest days.

There is only one other blacksmith regularly assigned to the 7:00 A.M. to 3:00 P.M. shift at Conway Enginehouse, and his name is John Larish. Mr. Larish, like the claimant, is assigned to a five (5) day week assignment, Monday through Friday, with Saturday and Sunday as rest days.

No regular relief assignment has been made to fill the positions of either the claimant or Blacksmith Larish on their rest days.

January 30, February 6 and 20, 1956, fell on Monday, one of claimant's rest days. On the days in question J. J. Matasick, an assigned laborer, with a tour of duty from 7:00 A.M. to 3:00 P.M. Saturday through Wednesday, rest days Thursday and Friday, was upgraded to perform blacksmith welder work and was compensated for the difference in rates of pay of assigned laborer and that of blacksmith welder.

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 the parties 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 or 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 employees in this case would require the Board to disregard the agreement between the parties hereto and impose upon the carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take any such action.

CONCLUSION

The carrier has established that there has been no violation of the applicable agreement in the instant case, and that the claimant is not entitled to the compensation which he claims.

Therefore, the carrier respectfully submits that your Honorable Board should deny the claim of the employees 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 employ or employees involved in this dispute are respectfully 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.

This claim concerns the assertion by the organization that Rule 2-A-5(a) of the effective agreement was violated by and through the improper upgrading of a helper to that of blacksmith welder on January 30, February 6 and 20, and subsequent dates, rest days of claimant's assignment, and on which dates claimant was available to perform any service required. Reparations are sought to the extent of eight (8) hours' pay, pro rata rate.

Rule 2-A-5 provides in part as follows:

"2-A-5(a). (Effective March 16, 1953) Vacancies in positions covered by this Agreement, either in positions not subject to advertisement under Rule 2-A-1, or in positions temporarily vacant pending award, may, if filled, be assigned by mutual agreement between the Foreman and designated representative. In the event agreement is not reached, the following procedure will govern:

1. Mechanic or helper assignments shall be offered to qualified available employees in the order of their seniority in the class but working in a lower class or craft at the location where such vacancy exists."

The carrier asserts that the word "may" in the above quoted rule does not make it incumbent upon them to confer with the organization, but that they (carrier) may, at their discretion create positions that are to be only of a single day's duration within the meaning of Item 1 of the above quoted rule. It was further asserted that prior Award No. 2417 of this Division is in error because of a lack of a clear concept of the history of negotiations leading up to the adoption of the rule.

It is well settled that the authority of this Board is limited to the interpretation of rules as they finally appear in an effective agreement. While it is true that the inclusion of the word "may" rather than the word "shall" alleviates the necessity of an agreement with the designated representative of the organization before effectuating the provisions of Item 1 of the above rule, it is nonetheless true that the provision therein contained that:—

"In the event agreement is not reached, the following procedure will govern:"

presupposes that at least a conference will be held between representatives of the parties leading to possible agreement before the provisions of Item 1 can become operative. Any other conclusion or finding would nullify the condition precedent in the rule.

There being no conference or attempt to reach agreement evident in this record, we are of the opinion, and so find and hold, that the agreement was violated.

For the reasons stated these claims are valid at the pro rata rate.

AWARD

Claims sustained at the pro rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 6th day of March, 1958.