

Award No. 2910

Docket No. 2605

2-PRR-MA-'58

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee James P. Kiernan when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 152
RAILWAY EMPLOYEE'S DEPARTMENT, AFL-CIO (Machinists)**

PENNSYLVANIA RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the controlling Agreement Machinist Antonio Daniello was unjustly dealt with when the Carrier denied him the right to work, instead of using F. A. Wisniewski, Jr., junior Machinist, first trick, Air Brake Shop, on May 26, 1955.

2. That the Carrier be ordered to compensate Machinist Antonio Daniello, at his regular rate, for all overtime worked by F. A. Wisniewski, Jr., junior Machinist on May 26, 1955.

EMPLOYEES' STATEMENT OF FACTS: Antonio Daniello, hereinafter referred to as the claimant, is employed by the Pennsylvania Railroad Company, hereinafter referred to as the carrier, on the Chesapeake Region, as a machinist in the air brake shop department, Wilmington Shops, Wilmington, Delaware, first trick, with a seniority standing of number 17 on the machinist seniority roster of the Wilmington Shops.

F. A. Wisniewski, Jr., is a machinist in the air brake shop department, Wilmington Shops, Wilmington, Delaware, first trick, with a seniority standing of number 101 on the machinist seniority roster of the Wilmington Shops.

On May 26, 1955, at approximately 2:00 P.M., E.S.T., a 3-CD air compressor from Electric Locomotive 4995 was delivered to the air brake shop with instructions to make immediate repairs in order to return the locomotive to service as soon as possible. There being no one working the second trick to perform this work it became necessary to work overtime to make the repairs.

The work involved on the 3-CD compressor was general overhaul which requires tearing down and checking parts for tolerances, refitting bearings,

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 agreements between the parties to it. To grant the claim of the employees in this case would require the Board to disregard the agreements 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 agreements. The Board has no jurisdiction or authority to take such action.

CONCLUSION

The carrier has established that the overtime work in question was assigned entirely in accordance with the local overtime agreement of March 21, 1951 (Exhibit C); that the claimant, Antonio Daniello, was not qualified to perform this work and that F. A. Wisniewski, Jr., was properly used on such assignment even though junior in seniority to the claimant; 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 employees' claim 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.

On May 25, 1955 at approximately 2:00 P.M. a 3-CD air compressor was delivered to the air brake shop with instructions to make immediate repairs. To comply with the instructions it was necessary to require two machinists to work overtime. This was known when the work was started on the first shift.

The joint statement of facts submitted shows:

(1) Claimant Daniello is a machinist Grade (E), assigned to first shift in the air brake shop, Wilmington, Delaware. He is No. 17 on the seniority roster.

(2) F. A. Wisniewski, Jr., also assigned to the air brake shop, is No. 101 on the seniority roster.

(3) On the day in question there were 34 machinists in the air brake shop senior to Wisniewski, (who performed the overtime work herein claimed) and 30 machinists senior to S. D. McDonald, (the other machinist used for the overtime work).

(4) The foreman ignored all other senior machinists.

The seniority date of claimant nor of Wisniewski are given in the record. We do have claimant's number on the seniority roster as No. 17 and Wisniewski's number as No. 101. Carrier claims none of the machinists in the air brake shop senior to Wisniewski were qualified to do the required work, except McDonald the other machinist used.

Section (8) of the overtime rule reads:

"When it is necessary for an employe, on emergency maintenance work, to complete a job on which he is working, such employe will continue on the job. When maintenance work is assigned and it is known that the completion of the job may necessitate overtime, the senior qualified employe of the group and on the trick will be assigned to the job."

Section (1) of the overtime rule reads in part as follows:

* * * "Any necessary overtime work required to be performed on other than Rest Days and Holiday, will be set up on the basis of the senior qualified employes in the groups of the Craft or Class on the preceding trick of the Department or sub-department thereof." * * *

Carrier states that the 3-CD air compressors were first repaired in the air brake shop sometime during the year 1948, and that the two men employed to do the work in question were the two senior employes qualified to do so. Carrier also contends that these two machinists were the only two with extensive experience on the repairs of the 3-CD compressors, and that the other machinists who worked on air compressors worked almost exclusively on other types. The record is vague as to how the two men selected to do the work had secured their knowledge, unless it was from the manual, carrier's Exhibit D. They were employed in the same air brake shop as the other senior machinists. This manual was printed in April 1955, a month before the claim originated. Nothing in the record indicates that Wisniewski made a special study of manual, or that he was given access to it while other machinists were not.

Claimant has been a machinist on the Pennsylvania Railroad for many years and at the time of the occurrence under discussion was employed in the air brake shop, where air compressors are repaired. Nothing in the record infers that claimant was criticized for his work on air compressors, or that he was unable to properly repair them, until this occasion. Claimant's work, carrier stated, was almost exclusively on air compressors, but of another type. However claimant was an experienced air compressor mechanic, yet the foreman decided he was not qualified to perform the work required. The only reason given was that claimant had never worked on the type of compressor here involved. Such reasoning is too negative to be given much consideration.

We cannot overlook the fact that the foreman was of the opinion that not one of thirty machinists, in the air brake shop, senior to his choice to perform the work, had the ability to do so.

Seniority rights should not be so lightly overlooked. Seniority, properly established, is an increasing equity in a right to preference. It cannot be secured by gift or inherited, nor can it be taken away or cancelled without

just cause. It is an asset immune from civil judgments, and a guard against discrimination, favoritism or nepotism.

The rule does not contemplate that the best qualified employe will be used, it requires only qualification.

"Whether an employe has sufficient fitness and ability to fill a position is usually a matter of judgment. The exercise of such judgment is a prerogative of management and unless it has been exercised in an arbitrary, capricious or discriminating manner we should not substitute our judgment for that of the management." (Third Division Award 6208)

We are of the opinion that the foreman did discriminate. Claimant was employed, and had been, for a long time, as a machinist, and at the time was employed in the air brake shop, working on compressors. That is sufficient proof that he was qualified, unless there had been prior complaints that he was not capable to repair air compressors.

Based upon the entire record we must hold that the overtime rule was violated.

Carrier pleads that it has not received due and proper notice of the claim. We hold to the contrary.

AWARD

Claim is allowed at the straight time rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 30th day of July, 1958.