

Award No. 3680

Docket No. 3552

2-PRR-MA-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when the award was rendered.

PARTIES TO DISPUTE:

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

THE PENNSYLVANIA RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current Agreement the Carrier unjustly deprived Machinist Helper J. B. Snively the right to exercise his seniority in accordance with Rule 3-D-4, when he was displaced from Job No. 90 by a senior employe and was, therefore, furloughed to the street while junior employes were permitted to work.

2. That accordingly, the Carrier be ordered, in accordance with the controlling Agreement, to permit Machinist Helper J. B. Snively the right to exercise his seniority over junior employes.

3. That the Carrier be ordered to compensate Machinist Helper J. B. Snively at the machinist helper Grade "P" rate of pay for all time lost retroactive to March 17, 1958.

EMPLOYEES' STATEMENT OF FACTS: J. B. Snively, hereinafter referred to as the claimant, was employed as a machinist helper, by The Pennsylvania Railroad Company, hereinafter referred to as the carrier, in the carrier's machine shop, locomotive shops, heavy repair shops, Altoona, Pennsylvania.

Claimant has been employed by the carrier since February 4, 1926, as a machinist helper and is shown on the 1958 roster with a roster number of 849, and has been employed as such continually until the instant dispute.

On Tuesday, March 11, 1958, claimant was displaced from Job No. 422 by G. L. McMullen, roster No. 797 and roster date March 4, 1925, a senior employe and in turn claimant exercised seniority over G. E. Baum, roster No. 896 and roster date August 6, 1926, on March 12, 1958, on Job No. 90, a temporary position.

On Friday, March 14, 1958, claimant was displaced from temporary job No. 90 by J. G. Stoy, roster No. 848 and roster date February 3, 1926.

When claimant was notified that he could not exercise seniority over junior employes he elected to be furloughed as a machinist helper rather than

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.-C. I. O., 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 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 conclusively shown that there has been no violation of the applicable agreement in the instant case and that the employees' claim is without merit.

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.

Parties to said dispute were given due notice of hearing thereon.

Under Rule 3-D-4, "employes whose positions are abolished may *** exercise their seniority over junior employes of the same craft or class, subject to Rule 3-B-3;" and "other employes affected may *** exercise their seniority in the same manner. (Emphasis added.)

Having been displaced by a senior employe whose position had been abolished, Claimant was entitled under Rule 3-D-4 to exercise his seniority "in the same manner," i.e., "over junior employes of the same craft or class subject to Rule 3-B-3". It is not contended that Claimant was disqualified by Rule 3-B-3, which is the only limitation stated in Rule 3-D-4 upon his right to exercise his seniority "over junior employes of the same craft or class."

However, the Carrier denied Claimant's right to exercise his seniority on the theory that having been displaced from a temporary position his only rights under Rule 2-A-4 were to "return to his regular position or exercise seniority to any position bulletined during his absence." There was no available position bulletined during his absence, and he could not return to his regular position because it was still filled by the senior employe who has displaced him in the exercise of seniority in force reduction.

Being a special provision, Rule 2-A-4 limits Claimant's seniority rights if it is applicable; but seniority rights are so fundamental that limitations upon them must be given effect strictly according to their terms.

Rule 2-A-4 relates to "an employe filling a temporary vacancy", but by its express term applies only "upon the expiration thereof." Therefore when the employe leaves his regular position to fill a temporary vacancy he must understand that if it expires — terminates — during his incumbency, his seniority rights will be limited by the first sentence of Rule 2-A-4. But the rule does not tell him that the same is true if he is displaced by a senior employe whose position has been abolished.

AWARD

Claim sustained for compensation for the time lost, subject to credit for outside earnings, if any.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 15th day of February 1961.