

Award No. 3682

Docket No. 3607

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 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

DISPUTES: CLAIM OF EMPLOYEES: 1. That the Carrier unjustly deprived T. W. Hurst, the difference between Machinist Helper Grade "P" rate of pay and Machinist Grade "E" rate of pay on account of not advertising Job No. 32 temporary, due to the permanent owner of the job being awarded Job No. 248.

2. That the Carrier be ordered to compensate T. W. Hurst the difference between Machinist Helper Grade "P" rate of pay and Machinist Grade "E" rate of pay, eight (8) hours for each of the following days, March 11, 12, 13, 14, 17, 18, 19, 20, 21, 24, 25, 26, 27, 28, 31, April 1, 2, 3, 4, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 1958.

EMPLOYEES' STATEMENT OF FACTS: Machinist T. W. Hurst, hereinafter referred to as the claimant is employed by the Pennsylvania Railroad Company, hereinafter referred to as the carrier, in the Juniata Locomotive Shops of the Altoona Heavy Repair Shops.

On account of the forces being reduced at the time of the instant dispute in the Juniata Locomotive Shops, it was necessary that claimant work as a machinist helper in order to hold a job.

On February 20, 1958, Mr. G. W. Keller, machinist, reported off disabled sick, thus creating a vacancy on Job No. 248, which was advertised on Bulletin No. 146 as a temporary vacancy on March 4, 1958.

Mr. F. E. Goodman, machinist, was immediately assigned to Job No. 248 in accordance with Rule 2-A-5, and, on March 17, 1958, Job No. 248, as advertised on Bulletin No. 146, was awarded to F. E. Goodman, thereby creating a vacancy on Job No. 32, The job was not advertised between March 11, 1958 and April 25, 1958, the date Job No. 32 was abolished.

This dispute has been handled, in writing, by the local chairman, International Association of Machinists, under date of April 19, 1958, with the foreman of the department involved and denied, in writing, by the foreman in his

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, based 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.

In February, 1958, Machinist Keller reported off sick, creating a temporary vacancy in Job 248 which was advertised under Rule 2-A-1 and awarded on March 17 to Machinist Goodman, who had been holding it under Rule 2-A-5.

Admittedly the vacancy in Job 32 created by Goodman's assignment on March 17 after advertisement came within Rule 2-A-1, for in the Joint Submission to the Manager-Labor Relations the carrier stated that it was known on that date that Job 32 would be vacant for a thirty days period.

The Employes' Position as stated in the Joint Submission was that the Carrier should either have abolished the job or have proceeded with its advertisement under Rule 2-A-1.

The Carrier's position as there stated was that "at the time Job No. 32 became vacant on March 17, 1958, there was not enough work to keep a man on the job," but that the foreman delayed abolishing it in the hope that enough work would develop to make its abolishment unnecessary; that since the job could have been, and later actually was abolished, claimant lost nothing even though the job was not advertised under Rule 2-A-1.

But the fact is that it was not abolished until April 25, and the claim is for the difference in pay between March 11 and April 18. Admittedly the March 17 vacancy was known to be of thirty days or more duration and if advertised under Rule 2-A-1 it would have been awarded not later than April 7. Thus the claim should be granted for the ten working days from April 7 to 18, inclusive, if Rule 2-A-1 is mandatory.

It provides that temporary vacancies known to be of at least thirty calendar days duration "will" be advertised within five working days of this occurrence for five working days, and that award "will" be made within five working days after close of advertisement.

By contract, Rule 2-A-5 provides that temporary positions not subject to advertisement under Rule 2-A-1 "may, if filled," be filled in certain designated way.

Rule 2-A-1 containing no such qualification this Board cannot supply one. Admittedly the job could have been abolished early enough to have eliminated the requirement for advertisement; but it was not, and Rule 2-A-1 must be enforced as adopted by the parties.

AWARD

Claim sustained for the ten working days from April 7 to 18, 1958, inclusive.

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.