

**Award No. 3683**

**Docket No. 3608**

**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.

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**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 the Carrier unjustly deprived L. R. Wallace, the difference between Machinist Helper Grade 'P' rate of pay and Machinist Grade 'E' rate of pay on account of not advertising job No. 131 temporary, while the permanent owner of the job was off with a nervous breakdown. This was in violation of Rule 2-A-1.

2. That the Carrier be ordered to compensate L. R. Wallace the difference between Machinist Helper Grade 'P' rate of pay and Machinist Grade 'E' rate of pay for each of the following days: March 20, 21, 24, 25, 26, 27, 28, 31, April 1, 2, 3, 4, 7, 8, 9, 10, 11, 14, 15, 1958.

**EMPLOYEES' STATEMENT OF FACTS:** Machinist L. R. Wallace, 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.

Due to 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 25, 1958, Mr. E. L. Beecher, machinist, Machine Shop No. 1, reported off disabled sick with a nervous breakdown. His permanent position was Job No. 131, and it was not advertised as the current agreement provides.

This dispute has been handled, in writing, by the local chairman, International Association of Machinists under date of April 18, 1958, with the foreman of the department involved and denied, in writing, by the foreman on April 22, 1958. It was then docketed by the local chairman with the superintendent of personnel on May 10, 1958, for the regular monthly meeting scheduled for May 20, 1958. Discussion was had, and, on June 24, 1958, the superintendent of personnel denied the claim in writing. On July 11, 1958, the local chairman requested that a joint submission be formulated and turned over to the general chairman for handling with the manager of labor relations, the highest officer of the carrier designated to handle grievances.

in the way of damages as his loss except for the working days subsequent to that date to April 16, 1958. See Awards 3651, 3659, 5186, 7240, 7309 and 7577 of the Third Division. In Second Division Award 1638, Referee Edward F. Carter, this Board, held:

"Making the employe whole simply means he shall suffer no loss. Consequently, the measure of damages for the breach of a collective employment contract is the amount an employe would have earned if he had not been wrongfully discharged, less what he did earn during the period of the breach. This conforms to the rule that the employe should be made whole and, at the same time, eliminates punitive damages which are not favored in law. It conforms to the legal holding that the purposes of the Board are remedial and not punitive; that its purpose is to enforce agreements as made and does not include the assessing of penalties in accordance with its own notions to secure what it may conceive to be adequate deterrents against future violations. The power to inflict penalties when they appear to be just carries with it the power to do so when they are unjust. The dangers of the latter are sufficient basis for denying the former."

See also 448, Fourth Division and 18249, First Division.

For all the foregoing reasons, it is respectfully submitted that the claim in this dispute 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 Employees' Department, A.F.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 but in no event none prior to April 7, 1958, 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.

This claim is essentially the same as in Award 3681, except that the illness involved a nervous breakdown, concerning the type or expected duration of which the record contains no medical evidence or other showing.

On the record we cannot conclude that the vacancy was known to be of at least thirty days duration so as to require advertisement within five days after its occurrence.

#### AWARD

Claim denied.

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.

#### LABOR MEMBERS DISSENT TO AWARD NO. 3683

Rule 2-A-1 is a mandatory rule and since the majority made the same error in this award as in Award 3681 we hereby incorporate by reference our dissent thereto.

Edward W. Wiesner

R. W. Blake

Charles E. Goodlin

T. E. Losey

James B. Zink