Award No. 4466
Docket No. 4349
2-PRR-MA-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Joseph M. McDonald when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 152, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.—C. I. O. (Machinists)

THE PENNSYLVANIA RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Carrier unjustly deprived Machinist E. D. McCall of the right to work on September 14, 1960.

2. That the Carrier be required to compensate Machinist E. D. McCall in the amount of eight (8) hours' pay, at the Grade C rate, for September 14, 1960.

EMPLOYES' STATEMENT OF FACTS: Machinist E. D. McCall, hereinafter referred to as the claimant, is regularly employed by the Pennsylvania Railroad Company, hereinafter referred to as the carrier, as a Grade C machinist at the Carrier's Wilmington Heavy Repair Shops, Wilmington, Delaware.

On September 1, 1960, System Federation No. 152, acting in accordance with the provisions of the Railway Labor Act, withdrew the services of its members from the carrier, and this strike action continued until September 12, 1960, at which time agreement was reached to terminate the strike.

Subsequent to commencement of the strike action on September 1st, however, the carrier, on September 3, 1960, abolished the positions of all its employes at Wilmington Shops.

One of the conditions of settlement of the strike was that the carrier would recall the employes to work no later than 7:00 A. M., Wednesday, September 14, 1960.

The carrier did recall the claimant and he reported for work at 7:00 A. M. on September 14th, but, subsequent to his reporting to work, the foreman sent him home on account of two weeks of his vacation having been originally scheduled for the period September 12 to 23, 1960, inclusive.

"Prior awards of this Division have held without exception that the burden of proof rests upon those presenting a claim."

In view of their obvious inability and their failure to attempt to sustain their burden of proof, the carrier respectfully submits that the claim lacks the necessary merit to warrant a sustaining award. Therefore, it should be denied.

On the basis of all of the above, the carrier submits that it is undeniably clear the employes' claim is without merit in every respect because:

1. No rule of an Agreement was violated;

2. The understanding of September 12, 1960, on which the Employes must necessarily rely, was not breached nor was it applicable to the circumstances of this dispute.

Accordingly, the carrier respectfully petitions the board to deny the employes' claim which claim can be seen to be nothing more than an attempt to obtain money based upon circumstances which developed after the situation precipitating this dispute.

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 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 interpretations 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 thereto. To grant the claim of the employes in this case would require the board to disregard the agreement between the parties 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 such action.

CONCLUSION

The carrier has shown that no rules of the applicable Agreement supports the claim of the employes and no violation of said rules agreement could possibly have occurred.

Therefore, your honorable board is respectfully requested to deny the claim of the employes 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.

On September 1, 1960, System Federation No. 152 withdrew its members from the service of the Carrier. On September 3, 1960, the Carrier abolished the positions of all employes at the Wilmington Shops, including that of the Claimant.

Agreement to terminate the strike was reached on September 12, 1960, and one of the terms of settlement was that all employes would report for work no later than 7:00 A. M., September 14, 1960.

Part of the Claimant's vacation had been scheduled from September 12 through the 23rd, 1960. Claimant reported for work on September 14, and was sent home as on vacation.

At 11:00 A. M., September 14, agreement was reached between the Carrier and the Organization that all vacations scheduled between September 1 and 16 would be cancelled and rescheduled. Claimant reported for and worked on September 15, and his vacation was rescheduled later in the year.

Claim is made for one day's pay for September 14, 1960.

Carrier contends that Claimant was actually on vacation on that day and would have received vacation pay for that day, but for the 11:00 A. M. agreement, and that agreement having been sought by the Organization, the loss of pay was the responsibility of the Organization. Further, the Carrier cites a notice it had posted in August to the effect that in the event of a strike, scheduled vacations would be observed.

These arguments ignore the facts of the withdrawal from service of the Organization's employes on September 1, and the abolishment of their positions by the Carrier on September 3. There was no agreement or schedule under the agreement between these parties until September 12, to be effective September 14. Why the vacation problem was not resolved until 11:00 A. M. on September 14 does not appear in this record, but neither the Carrier nor Claimant had the authority on September 12, 1960, to create the relationship of Employer and vacation Employe.

AWARD

Claim 1 — sustained.

Claim 2 — sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February, 1964.