

Award No. 4712
Docket No. 4571
2-PRR-MA-'65

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Dudley E. Whiting 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

DISPUTE: CLAIM OF EMPLOYEES: 1. That the Carrier violated the controlling agreement by assigning Machinist Craft work to laborers on July 9, 10, 11, 12, 13, 1962.

2. That the Carrier be required to compensate Machinist Craft employees, at the applicable rate, as follows:

J. H. Haunstein—8 hours each for July 9 and 10, 1962.

J. E. Straining —8 hours each for July 11 and 12, 1962.

D. C. Peifer —8 hours for July 13, 1962.

EMPLOYEES' STATEMENT OF FACTS: J. H. Haunstein, J. E. Straining, and D. C. Peifer, hereinafter referred to as the claimants, are employed by the Pennsylvania Railroad Company, hereinafter referred to as the carrier, at the Carrier's Harrisburg Enginehouse. They are regularly assigned as machinist helpers and, on the dates specified in the claim, were respectively observing their regularly assigned rest days and were available and subject to assignment of work under the provisions of the overtime agreement.

On the dates specified in the claim, G. W. Bair, regularly assigned at Harrisburg Enginehouse as a machinist helper, was on vacation. On July 9th and 10th, the carrier step-rated Laborer R. M. McLain, and on July 11th and 12th and 13th, step-rated Laborer G. E. Berrier, to do the work of G. W. Bair's vacant position.

On each of the specified dates, the assistant foreman consulted with the union committeeman with respect to filling the vacation vacancy under the provisions of Rule 2-A-5, by step-rating a laborer to the machinist helper position, but each time, the union committeeman informed the assistant foreman that the filling of vacation vacancies under Rule 2-A-5 was not proper. The carrier had not provided vacation relief workers, even though such positions were required to work each and every day.

the dates in question on Claimant's relief assignment, such action was not contractually mandatory."

Therefore, under no circumstances did the claimants have any demand right whatsoever to be used on the five dates involved.

To summarize the foregoing, carrier submits it has shown that the vacation vacancy of Machinist Helper G. W. Bair was properly filled in strict accordance with the applicable provisions of the National Vacation Agreement. The Employees' position in this dispute amounts to nothing more than wholly unsupported and contradictory statements. They have obviously failed to assume the burden of proving a violation, which your honorable board has consistently held it is incumbent upon them to do and therefore, there is no merit to the employees' claim and a denial award is here clearly indicated.

III. Under The Railway Labor Act, The National Railroad Adjustment Board, Second Division, Is Required To Give Effect To The Said Agreements 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 Agreements, which constitute the applicable agreements between the parties and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, 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 employees in this case would require the board to disregard the agreement between the parties hereto 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 any such action.

CONCLUSION: The carrier has established that there has been no violation of the applicable Agreement, and that the claimants are not entitled to the compensation claimed.

Therefore, the carrier respectfully submits that your honorable board should deny the claim of the employees 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 employees 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.

Machinist Helper G. W. Bair was on vacation on the claim dates. His

position was filled by step-rating senior assigned laborers. Claimant Haunstein was an assigned Machinist Helper on the first trick with rest days of Monday and Tuesday (July 9 and 10). Claimant Straining was similarly assigned with rest days of Wednesday and Thursday (July 11 and 12). Claimant Peifer was assigned on the second trick with rest days of Sunday and Monday and worked the second trick on July 13, 1962.

It appears that step-rating laborers to fill helper vacancies is comprehended by the agreement, is in accordance with prior practice, and is appropriate under Section 10 and 12 of the vacation agreement, so there is no valid basis for the claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 19th day of May, 1965.