

Award No. 4868

Docket No. 4807

2-PRR-MA-'66

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Donald F. McMahon 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 Agreement by not advertising the vacant Machinist Position of R. P. Sanderson within the seven (7) calendar days specified in the Agreement.

2. That the Carrier be required to compensate furloughed Machinist K. L. Basom for eight (8) hours pay at the Grade E rate for April 10, 11, 12, 15, 16, and 17, 1963; and furloughed Machinist M. V. Ciccocioppi, for eight (8) hours pay at the Grade E rate for April 18, 19, 22, 23, 24, 25, 26, 29, 30 and May 1, 1963.

EMPLOYEES' STATEMENT OF FACTS: Machinists K. L. Basom and M. V. Ciccocioppi, hereinafter referred to as the claimants, are employes of the Pennsylvania Railroad Company, hereinafter referred to as the carrier, at the Carrier's Harrisburg Engine house, Harrisburg, Pa. At the time this dispute arose, they held the status of furloughed machinists.

R. P. Sanderson was regularly employed as a machinist at the same Harrisburg Enginehouse, but in addition, he also possessed standing as an extra gang foreman.

The instant dispute arose as follows:

Assistant Enginehouse Foreman L. C. Miller was transferred from Harrisburg to Philadelphia, and regular Gang Foreman J. R. Kiner was promoted to Miller's position. In turn, Machinist R. P. Sanderson, on April 10, 1963, was promoted to fill the vacancy of Gang Foreman J. R. Kiner's position, thus leaving a vacancy in the machinist position of R. P. Sanderson.

The carrier made no effort to advertise R. P. Sanderson's vacant machinist position within the seven calendar days specified in the Agreement, so the local chairman of the machinists, on April 15, 1963, requested the enginehouse foreman to advertise the position. The foreman did not comply, so the

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 employes 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 such action.

CONCLUSION

The carrier has established that the claimants are not entitled to the compensation which they claim even if Rule 2-A-1 (b) was applicable; that it was not obliged under Rule 2-A-1 to advertise R. P. Sanderson's vacancy; and that the foreman did give a valid reason for his disallowance of the claim as required by Rule 4-0-1.

Therefore, the carrier respectfully submits that your Honorable Board should deny the claim of the employes in this matter.

The carrier demands strict proof by competent evidence of all facts relied upon by the claimants, with the right to test the same by cross-examination, the right to produce competent evidence in its own behalf at a proper trial of this matter and the establishment of a proper record of all of the same.

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.

Claims here are progressed on behalf of Machinists K. L. Basom and M. V. Ciccocioppi for specified dates, at the Grade E rate as set forth in the Joint Statement of Agreed Upon Facts, under date of December 18, 1963, and made a part of the record here.

The parties agree that the claimants were furloughed Machinists. That on April 10, 1963, Machinist R. P. Sanderson was assigned to a position as Gang Foreman, and served in such capacity to May 2, 1963, when he returned to his former assignment as Machinist.

The dates involved here from April 10, 1963 to May 3, 1963, are those in which claimants, as furloughed employes, are basing claims, to fill the Machinist position vacated by Sanderson. The Organization contends Carrier has violated the provisions of Rule 2-A-1 and 4-0-1. Rule 2-A-1 (b), provides that Carrier shall Bulletin such position within seven (7) calendar days from the date of the occurrence, or as here by April 17, 1963. Rule 4-0-1 provides, among other requirements, that Carrier shall notify the employe or his

representative its reason for denial or disallowance of the claim. Carrier has complied with Rule 4-0-1, and given sufficient reason for its denial of the claims.

Carrier on its behalf, relies on the provisions of Rule 2-A-1(b) of the Agreement. This rule requires that:

“New positions and all vacancies, above the class of common laborer, will be advertised within seven (7) calendar days from the date they occur, for a period of seven (7) calendar days.”

Rule 2-A-1(f) provides in reference to furloughed employes:

“Furloughed employes with seniority in the craft and class or who were furloughed from the class in which the position or vacancy exists, or who were furloughed from a lower class, will be considered as having bid for the vacancy. If entitled to the position or vacancy it will be awarded to him and he will be recalled from furlough.”

The Organization in Rebuttal to the Carrier's Submission contends that Rule 2-A-5 makes it mandatory upon Carrier to fill such vacancy, pending award to the successful bidder. From the record here, nothing is contained, in reference to violation by Carrier of this rule. Nothing shows in the record that either party made any showing that an effort was made to fill the vacancy by mutual agreement as provided by Rule 2-A-5. The reference here comes too late for the Division to give consideration to an alleged violation of the rule by Carrier.

Even though Rule 2-A-1(b) provides that Carrier shall advertise for bids within seven (7) days in which the vacancy occurs, such failure under the record before us, makes no reference to furloughed employes. Rule 2-A-1(f) as quoted above applies to Furloughed Employes, and consider them as having bid for the position. Carrier did not advertise for bids until April 25, 1963.

The offer of settlement, made by Carrier, of the claims, was rejected by the Organization. Such offer cannot be considered here.

In view of the foregoing Findings the claims should be denied.

AWARD

Claims denied as per Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of May 1966.