

Award No. 2038
Docket No. 1844
2-PULL-EW-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee David R. Douglass when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 122, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Electrical Workers)**

THE PULLMAN COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement Electrician E. B. Lyons was not granted his right to fill a temporary vacancy.

2. That accordingly the Carrier be ordered to additionally compensate the aforesaid employe the difference between the compensation he was paid during the temporary vacancy and what he would have earned had he been assigned to this vacancy.

EMPLOYEES' STATEMENT OF FACTS: Electrician E. B. Lyons, hereinafter referred to as the claimant, is employed, as an electrician at the Cincinnati District. His regular assigned hours were 9:00 A. M. to 5:30 P. M., relief days Saturday and Sunday.

Under date of May 8, 1954, our committee submitted a claim in favor of the claimant. A copy of said claim is hereby submitted and identified as Exhibit A.

Under date of June 14, 1954, a decision was rendered by Foreman Lankheit denying our claim. A copy of said decision is hereby submitted and identified as Exhibit B.

Under date of June 30, 1954, we appealed this decision. A copy of this appeal is hereby submitted and identified as Exhibit C.

Under date of August 17, 1954, Mr. Dodds denied our denial. A copy of this denial is hereby submitted and identified as Exhibit D.

Under date of August 26, 1954, we notified Mr. Dodds that we were going to appeal his decision. A copy of this letter is hereby submitted and identified as Exhibit E.

Under date of October 6, 1952, Mr. H. R. Lary, Supervisor, Labor Relations, sent out a letter of instructions in the application of Rule 23. A copy of this letter is hereby submitted and identified as Exhibit F.

from the shift from which an electrician can be spared. The memorandum does not provide that the senior employe of a shift shall be assigned or is entitled to the assignment.

The first sentence of paragraph 3 provides that if the company is unable to give the employe at least a 3-day written notice (with copy to local chairman) setting the effective date of the change of hours, the employe will be paid time and one-half for the first day of the change in accordance with Rule 23. As previously stated under Point 1, the company complied with these provisions and paid Funk at the rate of time and one-half for the work he performed in the temporary vacancy on April 30. The second sentence of paragraph 3 provides that if the company is unable to furnish the employe at least a 3-day written notice (with copy to local chairman) stating the effective date of return to his regular hours the employe will be paid time and one-half for the day on which he returns to his regular position. In the instant case Electrician Funk was notified on April 27, 1954, that the effective date of his return to his regular hours was May 2. Therefore, Funk was not entitled to be paid time and one-half on May 2.

Paragraph 4 provides that when the company does not have sufficient advance notice of the absence of an electrician to apply paragraphs 1 or 2 of this memorandum, the position will be filled by working an electrician overtime. In the instant case the company had sufficient advance notice to fill the position rather than to assign an employe to work more than his regular shift on an overtime basis. This paragraph clearly is not pertinent to this dispute.

The company submits that in view of the organization's failure to procure volunteers for the temporary vacancy or to furnish the foreman names of employes who allegedly desired to fill the temporary vacancy, the organization's contention in its initial claim; namely, that the company did not comply with the memorandum concerning the application of Rule 23, is violative of the meaning and intent of the memorandum. Clearly, the memorandum in question was not executed to cover cases where an employe occupying a relief position is available for assignment in a temporary vacancy on days when he is not assigned to a specific position and can be used without requiring a replacement. Obviously, under the conditions present in this case it was the obligation of the company to assign a qualified employe to fill the temporary vacancy, which assignment was made in an efficient and logical manner and in full compliance with the meaning and intent of the memorandum "Application of Rule 23."

CONCLUSION

In this ex parte the company has shown that there has been no violation of the agreement, with especial reference to Rule 23. Also, the company has shown that the memorandum titled "Application of Rule 23" does not require management to assign a senior employe in a shift to a temporary vacancy as claimed by the organization. The company's action in assigning Electrician Funk was efficient and reasonable and in conformity with the meaning and intent of the agreement and the memorandum "Application of Rule 23."

The organization's claim that Electrician Lyons should be paid the difference between what he earned during the period April 30-May 1, 1954, and what he would have earned had he been assigned to the temporary vacancy is without merit and should be denied.

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.

The parties to said dispute were given due notice of hearing thereon.

The facts of record indicate that a temporary vacancy was filled by using an employe of the carrier's choice from the same shift worked by the claimant. Claimant was senior to the electrician selected by the carrier.

The record contains a copy of the "Application of Rule 23" of the current agreement. This document was designed to provide a proper method of filling temporary vacancies where changes of hours are involved. It is provided that the foreman, when he decides a temporary vacancy must be filled, should contact the local committee and inform them that the requirements of the service necessitate the filling of a position and ask them to obtain volunteers from the shift from which the foreman decides an electrician can be spared.

Here, the foreman decided a temporary vacancy must be filled and contacted the committee, but did not ask them to obtain volunteers. Instead, the committee was told that it was felt that an electrician could not be spared from the 9:00 A. M. to 5:30 P. M. shift to fill the temporary vacancy.

When the committee was told that no one could be spared from the shift in question, it is reasonable to conclude that it would have been a needless and futile act for the committee to have then sought volunteers.

Inasmuch as the carrier ultimately "spared" an employe from the 9:00 A. M. to 5:30 P. M. shift, the claimant should have been permitted to exercise his seniority in accordance with the provisions of the "Application of Rule 23" considered along with Rule 37—the seniority rule.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 18th day of January, 1956.

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

(The Second Division consisted of the regular members and in addition Referee David R. Douglass when the interpretation was rendered)

INTERPRETATION NO. 1 TO AWARD NO. 2038

DOCKET NO. 1844

NAME OF ORGANIZATION: System Federation No. 122, Railway Employes' Department, A. F. of L. (Electrical Workers).

NAME OF CARRIER: The Pullman Company.

QUESTION FOR INTERPRETATION: Do the words in Award 2038 "Claim sustained" provide for the payment of 8 hours' pay at the time and one-half rate for May 2, 1954?

Upon application of the representatives of the Organization involved in the above award, that this Division interpret the same in the light of the dispute between the parties as to its meaning and application as provided for in Section 3, First (m) of the Railway Labor Act, as amended, the following interpretation is made:

This case was before us because of the fact that claimant should have been used to perform certain work, but the carrier used another employe instead of claimant. The employe who was actually used was given a three-day notice stating the effective date of return to his regular hours.

In substance, the only mistake made by the carrier was that it used the wrong man. Otherwise the procedure of notification was followed and there is no reason to believe that claimant would not have received "notice of change" had he been used. The answer to the question before us for interpretation is "NO".

Referee David R. Douglass, who sat with the Division as a member when Award No. 2038 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **SECOND DIVISION**

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 26th day of October, 1956.