

Award No. 2418

Docket No. 2232

2-PRR-MA-'57

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 152, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Machinists)**

THE PENNSYLVANIA RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement the Carrier unjustly denied Machinist Helper J. W. Amheiser the right to work on July 20, 1954.

2. That accordingly, the Carrier be ordered to compensate this employe for eight (8) hours at the pro rata rate for time lost on July 20, 1954.

EMPLOYEES' STATEMENT OF FACTS: J. W. Amheiser, hereinafter referred to as the claimant, is employed by the Pennsylvania Railroad Company, hereinafter referred to as the carrier, as a machinist helper in the Diesel Engine Shop at Altoona.

Claimant was on vacation from July 6, 1954 to July 19, 1954, inclusive. During the time claimant was on vacation his job No. 225-X was abolished.

Claimant reported for service, following his vacation, at 7:00 A.M. on July 20, 1954. The claimant was denied the right to exercise his seniority over a junior employe of his craft and class on July 20, 1954, and as a consequence thereof, he was not permitted to work this day thereby losing a day's pay.

The claimant was permitted by the carrier to exercise his seniority on Job No. 345, held by a junior employe, M. E. Kottman, taking over the job at 7:00 A.M. on July 21, 1954.

This dispute has been handled with the carrier up to and including the highest officer so designated by the company, with the result that he has declined to adjust it.

The agreement effective April 1, 1952, as it has been subsequently amended, is controlling.

Claimant Amheiser attempted to displace M. E. Kottman in the exercise of seniority at 8:55 A. M., July 20, 1954. Since Kottman's tour of duty was from 7:00 A. M. to 3:30 P. M. with one-half hour meal period it is clear that had claimant been permitted to make an actual displacement at 8:55 A. M., he would only have worked a total of six (6) hours and five (5) minutes on July 20, 1954. Thus, at most, the claimant would only be entitled to compensation in the amount of six (6) hours and five (5) minutes at the applicable pro rata rate if your Honorable Board were to decide, contrary to the facts, that the applicable agreement was violated in the instant case.

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. of L., 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 established that the applicable agreement has not been violated in the instant case and that the claimant is not entitled to the compensation which he claims.

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, 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.

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

Rule 3-D-4 provides in part:

"Employes whose positions are abolished may, within five (5) working days after being notified that their positions are abolished, exercise their seniority over junior employes of the same craft or class, subject to Rule 3-B-3. * * *"

It also provides for an employe reporting for duty after vacation that:

"If, during such absence, his regular position has been abolished or filled by a senior employe in the exercise of seniority, he may,

within five (5) working days after reporting for duty, exercise seniority, subject to Rule 3-B-3."

The carrier has shown that it has been the practice where an employee exercises seniority on the trick for him to take over that job at the beginning of the next regular tour of duty. The employees do not deny the existence of such a practice but contend it applies only to cases of abolishment or displacement while on duty. They contend it should not be extended to abolishments while on vacation because of the clear provisions of Rule 3-D-4.

That rule makes no provision for the mechanics of placement upon the exercise of seniority, so the practice shown does not conflict with the rule but implements it. The provisions for exercise of seniority are identical for employees whose positions are abolished while on duty and those whose positions are abolished while on vacation. Thus there is no reasonable basis for distinction between the two situations so the contention of the employees cannot be sustained.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 29th day of March, 1957.