

Award No. 2509

Docket No. 2315

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)**

PENNSYLVANIA RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the controlling agreement the Carrier improperly instructed Machinist E. J. Bickar that his services would not be required on a holiday unless advised to the contrary and thereby deprived him of his right to work on February 22, 1954, Washington's Birthday.

2. That accordingly the Carrier be ordered to compensate Machinist E. J. Bickar in the amount of eight (8) hours at the straight-time rate of pay on the aforesaid date.

EMPLOYES' STATEMENT OF FACTS: E. J. Bickar, hereinafter referred to as the claimant, is employed by the Pennsylvania Railroad Company, hereinafter referred to as the carrier, as a machinist, with a seniority date of August 15, 1942, at the Crestline, Ohio enginehouse. On May 6, 1955, a joint submission was formulated by Superintendent G. R. Weaver of the carrier's Fort Wayne Division and the organization's Local Chairman D. J. Sharp, involving the claim of the claimant. Copy of the joint submission referred to herein is submitted herewith and identified as Exhibit No. 1. Embodied in this joint submission is a "Joint Statement of Agreed-Upon-Facts" and we quote them in their entirety as follows:

"It is agreed that the claim for May 31, 1954, originally a part of this Case No. 256, having been handled to the satisfaction of the parties concerned, is no longer to be considered as a part of the question at issue.

On Monday, February 22, 1954, Washington's Birthday, Mr. E. J. Bickar, a regularly assigned Machinist at Crestline Enginehouse 7:00 A. M. to 3:00 P. M. Thursday through Monday, relief days of Tuesday and Wednesday, did not report for duty.

The fact that Mr. Bickar did not report for duty, was in accordance with instructions given him by his supervisor to the

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.

Claimant had standing instructions that his position would not work on holidays and accordingly he did not report for work nor work on February 22, 1954. It is contended that thereby his hours that week were reduced below forty (40) in violation of Rule 3-D-1.

That rule is not a guarantee rule but simply governs temporary reductions of forces, hours or both with a limitation upon the reduction of hours. No such reduction is involved in this case. This case simply involves holiday work which is governed by Rule 4-A-2. That rule clearly shows that it was not intended that all employes would work on holidays because it contains provisions for negotiation of local agreements for the distribution of work on those days.

No such local agreement had been negotiated at the point here involved so the carrier was justified in using the regular incumbents of positions worked on February 22. The fact that the claimant had greater seniority than two (2) employes who so worked is immaterial.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 21st day of June, 1957.

DISSENT OF LABOR MEMBERS TO AWARD NO. 2509.

The majority's findings that the claimant was not worked on his regular assignment on February 22, 1954, Washington's Birthday, is an admission that the claimant possessed the right to work on that day.

The majority further finds that the assignment in question was, in effect, blanked. The assignment was not blanked; the claimant was denied the right to work the assignment in question and the agreement does not authorize the carrier to deny employe the right to work his regular assignment.

The majority's findings that there is nothing in the agreement which required the carrier to work regularly assigned employes on holidays ignores the right of the claimant to work a day coming within his regularly weekly assignment of 40 hours—established in accordance with the rules of the controlling agreement, since there was no local agreement.

The claimant was not worked 40 hours in the week involved in this dispute pursuant to his assignment made in under the controlling agreement,

but only worked and was paid for 32 hours, so he was damaged to the extent of the loss of 8 hours pay for the week.

Therefore the majority erred in making the instant award.

R. W. Blake
Charles E. Goodlin
T. E. Losey
Edward W. Wiesner
James B. Zink