

Award No. 2572

Docket No. 2495

2-PRR-MA-'57

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Curtis G. Shake when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 152, RAILWAY EMPLOYEES'
DEPARTMENT, AFL (Machinists)**

THE PENNSYLVANIA RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement the Carrier improperly awarded a bulletined position to a junior employe, on or about May 13, 1955, thereby damaging Machinist R. M. Hart.
2. That, accordingly, the Carrier be ordered to assign Machinist R. M. Hart, the senior bidder, to the bulletined position and compensate him for all loss of wages retroactive to May 13, 1955.

EMPLOYEES' STATEMENT OF FACTS: R. M. Hart, hereinafter referred to as the claimant, was employed by The Pennsylvania Railroad Company, hereinafter referred to as the carrier, as a machinist, Grade E, in the Juniata Locomotive Shops Power Plant. The claimant served and completed his machinist apprenticeship on and under the direction of this carrier. The claimant is shown as No. 858 on the machinist seniority roster with the date of April 15, 1926.

The claimant has worked on numerous machinist assignments in the various departments of the locomotive shop prior to exercising seniority over a junior machinist holding a position in the power plant on January 15, 1954.

On May 2, 1955, the carrier posted Bulletin No. 351, copy submitted herewith and identified as Exhibit A, advertising several positions for bid. The position involved in this dispute is Job No. 202-A in the power plant.

On May 5, 1955, the claimant made application for Job No. 202-A, with Foreman F. M. Fowler.

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., System Federation No. 152, 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 head 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 shown that its refusal to assign the claimant to the machinist position in question on the basis that he was not qualified was in accordance with the provisions of the applicable agreement; and that he 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 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 carrier advertised for bids to fill a vacancy in a Grade "C" Machinist's position. The duties of the occupant of this position are to "repair, rebuild and set valves and test all electric and steam compression, turbines, hydraulic feed, water and sump pumps, stoker engines, conveyors, elevators, winches, boiler parts, including grates, fans, safety valves and any mechanical equipment in P.P. (Power Plant) and Boiler House."

The claimant, a Grade "E" mechanic with 29 years seniority was the only bidder. The carrier concedes that he was eligible to bid; that he is a loyal and trustworthy employe and a good machanic on routine work but rejected his application on the ground that he did not possess the necessary fitness and ability for the position involved. The position, therefore, was awarded to a junior, furloughed employe who did not bid for it.

The Organization contends that the refusal to award the position to the claimant was improper and it asks that the carrier be required to do so and compensate him for time lost. The claim is predicated on the theory that claimant was qualified for the position; that the carrier ought to have

afforded him an opportunity to demonstrate his qualifications and that it was a violation of the Agreement to assign the job to a junior employe who was on furlough.

Rule 3-B-3 of the Agreement provides that positions will be awarded by the designated official in accordance with seniority, fitness and ability, and Rules 2-A-3, 3-D-5 provide, in effect, that an employe who is awarded an advertised position shall have 10 working days to qualify and that the Supervisory Force will give such employe full cooperation in his effect to do so.

It will thus be seen that Rules 2-A-3 and 3-D-5 have no application here, because they pertain to the rights of an employe **who has been awarded a position** and the claimant has not. See Award No. 2414. Rule 3-B-3 vests a sound discretion in the carrier to determine the fitness and ability of an applicant and this Board cannot substitute its judgment for that of the carrier in determining such matters. It is only in those instances where it is established that a carrier acted arbitrarily or unreasonably that the Board is authorized to interfere.

The evidence before us falls short of establishing that the carrier was arbitrary or unreasonable. While the dispute was on the property it offered to submit the question of the claimant's qualifications to a bi-partisan committee, composed of a representative named by it and one named by the Organization and to abide by the committee's decision and compensate the claimant for wages lost, if the decision should be in his favor. While this proposal might not have resolved the controversy, if it had been accepted, we think it is highly persuasive that the carrier did not act arbitrarily.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 17th day of July, 1957.