

Award No. 3281
Docket No. 2894
2-PRR-MA-'59

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee James P. Carey, Jr., when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 152, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.—C. I. O. (Machinists)**

PENNSYLVANIA RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

(1) That under the current Agreement and the Vacation Agreement of December 17, 1941, as Amended, and interpretations thereon, the Carrier improperly filled the vacation period of E. T. Steis, Machinist, Ridgway, Pennsylvania, with an employe with no seniority in the Machinist Class.

(2) That accordingly the Carrier be ordered to compensate the Claimant, A. Palmquist, Machinist, Ridgway, Pennsylvania, eight (8) hours at the time and one-half rate of pay for each of the following days—August 30th and 31st, 1956; and September 6, 7, 13, 14, 1956.

EMPLOYEES' STATEMENT OF FACTS: Machinist A. Palmquist, hereinafter referred to as the claimant, is regularly employed, bulletined and assigned as a lead machinist (Grade E-6), at Ridgway, Pennsylvania engine-house, with a relief assignment consisting of the following work schedule: Saturday—6:00 A. M. to 2:00 P. M.; Sunday and Monday—2:00 P. M. to 10:00 P. M.; Tuesday and Wednesday—10:00 P. M. to 6:00 A. M.; Thursday and Friday—rest days. The claimant's seniority date as a machinist is 3-25-42. E. T. Steis is regularly employed, bulletined and assigned as a lead machinist (Grade E-6), at Ridgway, Pennsylvania enginehouse, with a third shift tour of duty, 10:00 P. M. to 6:00 A. M., Tuesday and Wednesday rest days. E. T. Steis has a seniority date in the machinist class of 10-8-47.

Lead Machinist E. T. Steis was assigned a vacation period from August 30, 1956 to September 17, 1956, inclusive, in accordance with Article I, of the Vacation Agreement of December 17, 1941, as amended. The carrier's foreman at Ridgway, Pennsylvania, unilaterally assigned C. H. Thompson,

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 any such action.

CONCLUSION

The carrier has established that there has been no violation of the applicable agreement, 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 employee 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 employee or employees involved in this dispute are respectively carrier and employee 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 waived right of hearing thereon.

During the period of Machinist Steis' vacation in 1956, carrier upgraded and assigned C. H. Thompson to fill that temporary vacancy. Thompson held machinist helper's seniority and, on several occasions, had been used to fill various types of vacancies as lead machinist.

On the facts and circumstances shown of record the carrier's action was within the spirit and intent of the National Vacation Agreement of December 17, 1941, and did not contravene the basic agreement. Therefore, the instant claim lacks support.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 24th day of June 1959.

DISSENT OF LABOR MEMBERS TO AWARD NO. 3281.

The majority in making Award No. 3281 ignored the controlling agreement rules covering the filling of machinist vacancies. Rule 5-F-1 reads as follows:

"None but mechanics or apprentices regularly employed as such shall do the work specified as such to be assigned to fully qualified mechanics." (Emphasis ours.)

Rule 2-A-5 reads as follows:

“Vacancies in positions covered by this Agreement, either in positions not subject to advertisement under Rule 2-A-1 or in positions temporarily vacant pending award, may, if filled, be assigned by mutual agreement between the foreman and designated representative. * * *.” (Emphasis ours.)

The carrier filled the vacancy with another employe who held no machinists seniority, when employes holding machinists seniority were available—this is in violation of Rule 5-F-1.

Rule 2-A-5 provides that the vacancy be filled by mutual agreement between the foreman and designated representative. This was not done so Rule 2-A-5 was violated. See Award No. 2417 of this Division on this agreement rule.

Therefore the award is in error.

R. W. Blake

C. E. Goodlin

T. E. Losey

Edward W. Wiesner

James B. Zink