

**Award No. 3282**

**Docket No. 2895**

**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.**

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**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 the 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, E. I. Lunger, Machinist, Ridgway, Pennsylvania, eight (8) hours at the time and one-half rate of pay for each of the following days, September 1, 2, 3, 8, 9, 10, 15, 16 and 17, 1956.

**EMPLOYEES' STATEMENT OF FACTS:** Machinist E. I. Lunger, hereinafter referred to as the claimant, is regularly employed, bulletined and assigned as a lead machinist (Grade E-6), at Ridgway, Pennsylvania enginehouse, with second shift tour of duty, 2:00 P. M. to 10:00 P. M., daily except Sunday and Monday. The claimant's seniority date as a machinist is 9-1-49. E. T. Steis is regularly employed, bulletined and assigned as a lead machinist (Grade E-6), at the 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, assigned laborer, who held a regular assignment as a relief assigned laborer, with tour of duty of 6:00 A. M. to 2:00 P. M. on Saturday, Sunday and

The carrier submits, therefore, that even assuming a violation of the applicable agreement in the instant case, which the carrier denies, the claimant would only be entitled to the compensation claimed at the straight time rate of pay.

**III. Under The Railway Labor Act, The National Railroad Adjustment Board, Second Division, Is Required To Give Effect To The Said Agreements 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 agreements, which constitute the applicable agreements between the parties and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, 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 employes in this case would require the Board to disregard the agreement between the parties hereto and impose upon the 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 employes 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.

Parties to said dispute waived right of hearing thereon.

This claim involves the identical questions presented in Award No. 3281 (Docket No. 2894). Our decision in that docket is also determinative of the instant claim.

## 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. 3282.**

The majority in making Award No. 3282 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.

Therefor the award is in error.

**R. W. Blake**

**C. E. Goodlin**

**T. E. Losey**

**Edward W. Wiesner**

**James B. Zink**