

Award No. 3450

Docket No. 3360

2-PRR-MA-'60

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Francis B. Murphy when the award was rendered.

PARTIES TO DISPUTE:

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

THE PENNSYLVANIA RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier violated the provisions of the controlling Agreement when it denied Machinist D. E. Holdeman, the senior employe, the right to work on November 7, 8, 11, 12, 13, 15, 18, 19, 20, 21, 22 and 25, 1957.
2. That accordingly, the Carrier be ordered to compensate Machinist D. E. Holdeman, the Grade "E" pro rata rate of pay for November 7, 8, 11, 12, 13, 15, 18, 19, 20, 21, 22 and 25, 1957.

EMPLOYEES' STATEMENT OF FACTS: Machinist D. E. Holdeman, hereinafter referred to as the claimant, was employed as a machinist, by the Pennsylvania Railroad, hereinafter referred to as the carrier, on May 9, 1941, at the carrier's Juniata Locomotive Heavy Repair Shops, located in Altoona, Pennsylvania.

On October 31, 1957, the carrier elected to reduce its force of machinists and as a result thereof claimant was displaced in a seniority move on November 4, 1957, and in accordance with the rules of the agreement, displaced the only remaining junior machinist (G. E. Funk) on Job No. M-63A, operating a Globe Balancing Machine, effective November 6, 1957.

Following the exercising of seniority of claimant, the carrier nevertheless retained the junior machinist (G. E. Funk) in service, thereby increasing its force by one machinist.

On November 7, 1957, claimant was disqualified and junior Machinist Funk was immediately re-assigned to Job M-63A.

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 the parties 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 employes in this case would require the Board to disregard the agreement between the parties thereto 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 in the instant case, and that the employes have presented no valid evidence to the contrary.

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.

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

Claimant was employed as a machinist at the time the carrier elected to reduce its forces and as a result after being displaced by a senior employe chose to displace the only remaining junior (G. E. Funk) machinist.

The carrier assigned the claimant under the provisions of Rule 3-B-3 reading as follows:

"Positions will be awarded by the designated official in accordance with seniority, fitness and ability."

The organization cites Rule 2-A-3 reading in pertinent part as follows:

"Employes will be given full cooperation of Supervisory Force and others in their effort to qualify."

The carrier in this case violated Rule 2-A-3 and made no attempt to cooperate with the claimant in his attempt to properly operate his assignment in fact, they continued the employment of his junior machinist and on November 7, 1959, disqualified the claimant and reassigned Mr. Funk to claimant's duties.

From the record as presented in this case, we must hold that there was a violation of Rule 2-A-3. We feel that there was a deliberate failure to cooperate with the claimant and must sustain his claim.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 21st day of April, 1960.