Award No. 3681
Docket No. 3606
2-PRR-MA-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition referee Howard A. Johnson 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 EMPLOYES:

1. That the Carrier unjustly deprived R. S. Shoup, the difference between Machinist Helper Grade "P" rate of pay and Machinist Grade "E" rate of pay on account of not advertising Job No. 36 temporary while the permanent owner of the job was off sick. This was in direct violation of Rule 2-A-1.

2. That the Carrier be ordered to compensate R. S. Shoup, the difference between Machinist Helper Grade "P" rate of pay and Machinist Grade "E" rate of pay, eight (8) hours for each of the following days. March 27, 28, 31, April 1, 2, 3, 4, 6, 8, 9, 10, 11, 14 and 15, 1958.

EMPLOYES' STATEMENT OF FACTS: Machinist R. S. Shoup, hereinafter referred to as the claimant, is employed by the Pennsylvania Railroad Company, hereinafter referred to as the carrier, in the Juniata Locomotive Shops of the Altoona Heavy Repair Shops.

Due to the forces being reduced at the time of the instant dispute in the Juniata Locomotive Shops, it was necessary that claimant work as a machinist helper in order to hold a job.

On March 1, 1958, Mr. James Deffley, machinist, Machine Shop No. 1, reported off disabled sick. His permanent position was Job No. 36, and it was not advertised as the current agreement provides.

This dispute has been handled, in writing, by the local chairman, International Association of Machinists under date of April 18, 1958, with the foreman of the department involved and denied, in writing, by the foreman on April 22, 1958. It was then docketed with the superintendent of personnel on May 10, 1958, for the regular meeting scheduled for May 20, 1958. Discussion was had and on June 12, 1958, the superintendent of personnel denied the claim in writing.

ploye should be made whole and, at the same time, eliminates punitive damages which are not favored in law. It conforms to the legal holding that the purposes of the Board are remedial and not punitive; that its purpose is to enforce agreements as made and does not include the assessing of penalties in accordance with its own notions to secure what it may conceive to be adequate deterents against future violations. The power to inflict penalties when they appear to be just carries with it the power to do so when they are unjust. The dangers of the latter are sufficient basis for denying the former."

See also 448, Fourth Division and 18249, First Division.

For all the foregoing reasons, it is respectfully submitted that the claim in this dispute should be denied.

III. **Under The Railway Labor Act, The National Railroad Adjustment Board, Second Division, Is Required To Give Effect To The Said Agreement 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 agreement, which constitutes the applicable agreement between this carrier and the Railway Employes' Department, A.F.L.-C.I.O., 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 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 conclusively shown that there has been no violation of the applicable agreement in the instant case and that the employes' claim is without merit.

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.

Parties to said dispute were given due notice of hearing thereon.

The claim does not state, and the record does not show, that the vacancy was known to be of at least thirty days duration and was accordingly within the provisions of Rule 2-A-1.

Thus this Board is not called upon to decide whether the Carrier should have abolished the position or advertised it under the Rule.

According to the Employes' Rebuttal the carrier knew that Mr. Deffley was hospitalized and was given oxygen because of a serious heart condition; it states further that he has become paralyzed and unable to recognize his family or to work. But there are many types of heart conditions, both serious and otherwise, no medical or other evidence is shown in the record or stated to have been given the carrier concerning the expected duration of the illness, and this Board cannot determine from the record that the vacancy was known to be of thirty days or more duration so as to require advertisement within five days after its occurrence.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 15th day of February 1961.

DISSENT OF LABOR MEMBERS TO AWARD NO. 3681

Rule 2-A-1 of the agreement reads in part as follows:

> "New positions and all vacancies, including temporary vacancies known to be of thirty (30) calendar days or more duration, will be advertised within five (5) working days from the date they occur, for a period of five (5) working days. Bulletin will show whether positions or vacancies are of permanent or temporary nature. Award will be made and bulletin announcing the name of the successful applicant will be posted within five (5) working days after the close of the advertisement * * *."

There is no evidence in the record that during the handling of this dispute on the property the carrier raised the question as to whether or not the employe would be able to return within thirty calendar days. (See Employes' Exhibits A, B and C attached to the original submission).

Rule 2-A-1 is mandatory and the carrier violated said rule. Therefore the award is erroneous.

Edward W. Wiesner

R. W. Blake

Charles E. Goodlin

T. E. Losey

James B. Zink