

Award No. 3692

Docket No. 3537

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 award was rendered.

PARTIES TO DISPUTE:

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

THE PENNSYLVANIA RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: (1) That C. L. Mott, Locomotive Preparer was improperly up-graded to perform duties of the Machinist Craft on January 17th and 18th, 1957.

(2) That accordingly, the Carrier be ordered to compensate H. P. Delo, at the overtime rate of pay for eight (8) hours on each date of January 17 and 18, 1957.

EMPLOYEES' STATEMENT OF FACTS: H. P. Delo, machinist, hereinafter referred to as the claimant, is employed by the Pennsylvania Railroad Company, hereinafter referred to as the carrier, at Oil City enginehouse, Pennsylvania, Northern Region. Claimant was regularly assigned to a machinist position on first track, tour of duty 7:00 A.M. to 3:00 P.M. daily, except Thursday and Friday, which were his rest days.

On Thursday and Friday, January 17 and 18, 1957, C. L. Mott, laborer, was up-graded to perform duties in the machinist craft. C. L. Mott held a position as locomotive preparer at Oil City enginehouse, with a tour of duty from 7:00 A.M. to 3:00 P.M. with Saturday and Sunday rest days. C. L. Mott, by virtue of his assignment as a locomotive preparer, is covered by the agreement represented by the Transport Workers' Union—C.I.O.

There was no attempt by the foreman to consult with the local representative of the employees, in connection with the up-grading of C. L. Mott on the two (2) days outlined in the claim.

The agreement effective April 1, 1952, as it has subsequently been amended, is controlling.

POSITION OF EMPLOYEES: It is submitted that the carrier on January 17 and 18, 1957 violated Rules 5-F-1, 5-A-1(g) and 2-A-5, when they unilaterally up-graded a laborer (locomotive preparer) who is not covered by the agreement of April 1, 1952 to machinist or machinist helper.

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 employees 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 in the instant case, 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 employees 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 employees 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 therein.

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

Rule 2-A-5(a) provides that vacancies in positions not subject to advertisement "may, if filled, be assigned by mutual agreement between the Foreman and designated representative" and that "in the event agreement is not reached employes from lower crafts at the location and working on the shift may be used."

On two days of his regular assignment at Oil City, C. L. Mott, a Locomotive Preparer under another Agreement, but with seniority there also as Mechanic and Mechanic Helper in the Machinist Craft, was used as a Mechanic Helper.

The Claim is that he was improperly step-rated because the Carrier did not first attempt a mutual agreement.

On February 28, 1956, the Local Chairman wrote the Enginehouse Foreman as follows:

"In view of the fact that management has seen fit to reduce the machinist force further at this point by two men, while keeping a correspondingly excessive force in all other crafts, I have been instructed by our regional Chairman to notify you that, effective with this lay-off, we will not allow you to fill any vacancies whatever in the machinist craft by step-rating laborers. This also applies to extra work. It will be necessary to call out machinists for these jobs,—otherwise we will make time claims in every case."

On March 1, 1956, the latter replied as follows:

"you state that you have been instructed by the Regional Chair-

man, I.A. of M. (AFL) that effective with this lay off (2 machinists) you will not let us fill any vacancies whatever in machinist craft by step-rating of laborers, this also applying to any extra work.

"Please be advised that we will follow regulations in connection with filling vacancies."

The Local Chairman's letter definitely notified the Carrier that "we will not allow you to fill any vacancies whatever in the machinist craft by step-rating laborers." Since the record discloses no change of circumstances or notice the Carrier was still under notice in January, 1957 that no agreement for step-rating would be made. Therefore it was not required to perform the useless act of requesting such an agreement before proceeding according to the further provisions of the Rule.

It is argued that as the local committee had no authority to amend or waive the Rules its action was invalid and did not entitle the Carrier to proceed without first attempting to reach an agreement. But, as stated in the Local Chairman's letter, his notice to the Carrier was based on higher authority; and in any event it did not involve either a waiver of any right under the Rules, or an attempt to change the Rules. It merely gave the Carrier notice that the Employees would not agree to allow Carrier "to fill any vacancies whatever * * * by step-rating Laborers."

There was no regularly scheduled position of Mechanic Helper at Oil City, and helpers' work there was ordinarily performed by a Mechanic, who received his own higher rate, in accordance with the Rules. The contention is made, therefore, that there was no vacancy of Helper to be filled. But under the Rules temporary vacancies of two or more days may be established, and are not subject to advertisement unless known to be of thirty days or more duration.

It is further contended that under Rules 5-F-1 to 5-F-4, inclusive, only mechanics, apprentices and helpers may do mechanics' work. But all the Rules, including 2-A-5, must be given effect. And as noted above, Mr. Mott held seniority both as Mechanic and Helper.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 27th day of February, 1961.

Labor Members Dissent To Award No. 3692

Rule 2-A-5 of the effective agreement between the parties reads in part as follows:

"2-A-5(a). (Effective March 16, 1953) 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 used the procedure thereafter specified to fill the vacancy here involved **without** any attempt to obtain the required mutual agreement and in so doing it violated the rule.

This rule presupposes that at least a conference will be held between the representatives of the parties. Any other conclusion or finding nullifies the condition precedent in the rule.

There being no conference or attempt to reach agreement the agreement was violated. See Awards 2417 and 2805.

Edward W. Wiesner
R. W. Blake
Charles E. Goodlin
T. E. Losey
James B. Zink