

Award No. 3748
Docket No. 3698
2-PRR-MA-'61

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Richard F. Mitchell 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 under the controlling Agreement Machinist Joseph Imperiale was unjustly dealt with when the Carrier refused to permit him to exercise his seniority by displacing a junior machinist, R. W. Blackburn, on July 3, 1958, such displacement to become effective on July 6, 1958.

2. That the Carrier be ordered to permit Machinist Imperiale to complete the displacement he attempted on July 3, 1958 and compensate him at the Grade E rate of pay for July 4 and July 6, 1958 and for all subsequent time and money lost (including overtime) and all benefits he may lose, as a result of Carrier's said action, until final settlement of this claim.

EMPLOYEES' STATEMENT OF FACTS: Joseph Imperiale, hereinafter referred to as the claimant, is employed by the Pennsylvania Railroad Company, hereinafter referred to as the carrier, at the Wilmington, Delaware Seniority Point. He stands No. 322 as a machinist on the Wilmington roster with a seniority date of June 7, 1945.

R. W. Blackburn is employed as a machinist at Wilmington Enginehouse, Wilmington Seniority Point. He stands No. 341 as a machinist on the Wilmington roster with a seniority date of February 18, 1946.

In early May, 1957, by agreement between the foreman of Wilmington enginehouse and the local chairman of the machinists, under the provisions of Rule 2-A-5 of the schedule agreement, the claimant was transferred to Wilmington enginehouse to fill the vacancy of E. F. Brady, machinist, who was off sick at the time. On Bulletin 840-1-SC, dated May 13, 1957, Machinist Brady's vacancy was advertised as job No. 6. The claimant placed a bid for job No. 6 and was awarded the job effective May 27, 1957. A copy of "Notice Of Awards To Bulletin No. 840-1-SC," was posted May 21, 1957 and showing Job No. 6 awarded to Claimant.

Claimant worked as a machinist at Wilmington enginehouse from May, 1957 to February, 1958. This is verified by the carrier in the joint statement

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 herein.

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

Joseph Imperiale, the claimant is employed as a machinist by the carrier at the Wilmington, Delaware Seniority Point, with a seniority date of June 7, 1945.

R. W. Blackburn is employed as a machinist by the carrier at the Wilmington Enginehouse, Wilmington Seniority Point, with a seniority date of February 18, 1946.

Claimant worked as a machinist at Wilmington Enginehouse from May 1957 to February 1958. In February 1958 he elected to bid on a machinist job in the wheel shop, as a result of that bid he was awarded Job 13, January 24, 1958. He continued to work at Wilmington Back Shops until July 3, 1958. During force reductions he was demoted to machinist helper. On July 3, 1958, during force reduction, he was displaced as a machinist helper, and his seniority standing did not present any further bumps by him at Wilmington Back Shops.

On July 3, 1958, claimant went to the office at Wilmington Shops and made a bump against R. W. Blackburn Machinist, Wilmington Enginehouse. Mr. Bender, Acting Enginehouse Foreman refused to accept claimant's bump, and on the same day, July 3, 1958 wrote Mr. J. Imperiale the following letter:

"Considering our conversation today and your work here in the past, I feel that you are not qualified at this time to hold a machinist job at Wilmington Enginehouse."

It is the contention of the employees that there is no justification, under the Agreement for the Carrier's refusal to accept the bump against Machinist R. W. Blackburn at Wilmington Enginehouse, and that by so doing it not only violated the agreement, but acted in an arbitrary and discriminatory manner against the claimant.

Rule 3-B-3 of the agreement governs the exercise of seniority by employees, and reads as follows:

"3-B-3. Positions will be awarded by the designated official in accordance with seniority, fitness and ability."

Under this rule, one of the conditions precedent to awarding a position to an employe is that he possess the required fitness and ability to perform the duties thereof.

The employees in their submission state, and we quote from Position of Employees:

"We are aware that the Board has ruled, on many occasions, that it is the prerogative of the carrier to exercise its judgment as to the fitness and ability of an employe to fill a position unless it has been exercised in an arbitrary, capricious or discriminatory manner."

We quote from Second Division Award No. 2469:

"The agreement does not specifically provide for written tests to determine qualifications and neither does it specifically prohibit such tests. To determine whether or not an employe is qualified is usually a matter of judgment by management. Management may use any number of methods to aid it in forming a judgment, and so long as the methods used are fair and reasonable, and administered without discrimination, we cannot substitute our judgment for that of management. We find in this case that management did not exercise its judgment in an arbitrary or discriminatory manner."

The claimant possessed the necessary seniority and it is the contention of the employees he has proved his fitness and ability by holding positions at Wilmington Enginehouse, for better than eight months, which had required him to be fully qualified, without the carrier objecting to the manner in which he performed his work.

There is however, in the record separate statements by four different gang foremen under whom J. Imperiale worked at Wilmington Enginehouse, we quote from same:

"I do not feel that J. Imperiale is qualified as a machinist at Wilmington Enginehouse, as his knowledge of the diesel locomotive is very limited and he showed very little interest in trying to learn. In the past when he worked at Wilmington Enginehouse, I could only assign him to the rough work on the locomotive."

We quote from another statement by a gang foreman:

"Machinist J. Imperiale has worked for me in the past for a considerable length of time. In my estimation he has very little mechanical knowledge in relation to diesel locomotive."

From a statement from another gang foreman, under whom claimant worked, we quote:

"The work that he usually was assigned to which was M. I. work on diesel locomotive was poor and unsatisfactory. His work usually had to be checked on account of his poor workmanship."

Thus we find that the gang foremen, four in number, under whom J. Imperiale worked were of the opinion that he was not qualified, at that time to hold a machinist position at Wilmington Enginehouse.

We find from this record that the carrier refused to allow claimant to displace Blackburn was an exercise of managerial judgment, that was neither arbitrary, capricious or discriminatory.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 12th day of June, 1961.

DISSENT OF LABOR MEMBERS TO AWARD NO. 3748

The claimant possessed the necessary seniority to hold the position involved in this dispute. "Seniority rights should not be so lightly overlooked. Seniority, properly established, is an increasing equity in a right to preference." (See Award No. 2910.) Previously he held a like position at the Wilmington Enginehouse for over eight months without a question being raised regarding his qualifications during that period. He should have been placed on the position as requested by him in the exercise of his seniority.

Award No. 3748 therefor is erroneous.

/s/ Edward W. Wiesner

/s/ R. W. Blake

/s/ Charles E. Goodlin

/s/ T. E. Losey

/s/ James B. Zink