

Award No. 4143

Docket No. 4145

2-PRR-MA-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee J. Harvey Daly when the 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 contrary to the understanding reached in the settlement of the strike in September, 1960, the Carrier unjustly deprived Machinist Severin Strobel the right to work his full eight (8) hour tour of duty on September 14, 1960.

2. That accordingly, the Carrier be ordered to compensate Machinist Severin Strobel an additional six (6) hours pay for September 14, 1960, account of only being permitted to work two (2) hours on that date, in violation of the aforesaid understanding.

EMPLOYEES' STATEMENT OF FACTS: Severin Strobel, hereinafter referred to as the claimant, is employed as a machinist, by the Pennsylvania Railroad Company, hereinafter referred to as the carrier, in the carrier's air brake shop, locomotive shops, heavy repair shops, Altoona, Pennsylvania.

Claimant Strobel started his employment with the Pennsylvania Railroad Company on July 16, 1923 and having rendered compensated service on a sufficient number of qualifying days in each of fifteen (15) years, that he was entitled to fifteen (15) days vacation in the year 1960, and, he was scheduled for vacation from September 12 through September 30, 1960,—15 days.

Between the period September 1 and 14, 1960, there was a work stoppage on the Pennsylvania Railroad due to a dispute between the Transport Workers Union and System Federation No. 152, with the Pennsylvania Railroad Company.

On September 3, 1960, the carrier posted a notice at all points on the system where there were pickets stationed, that all positions and jobs were abolished effective September 3, 1960.

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 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 and 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 claims of the employees 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 such action.

CONCLUSION

The carrier has shown that no rule of agreement was violated and claimant is not entitled to the compensation claimed in any respect.

Therefore, the carrier respectfully submits that the claim of the employees in this matter as presented to your Honorable Board should be denied.

The carrier demands strict proof by competent evidence of all facts relied upon by the employees, with the right to test the same by cross-examination, the right to produce competent evidence in its own behalf at a proper trial of this matter and the establishment of a record of all of the same.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 Claimant, Severin Strobel, began his employment with the Carrier on July 16, 1923, and when this claim was initiated he was working as a machinist at the Carrier's Heavy Repair Shops, Altoona, Pennsylvania, from 7:00 A. M. to 3:30 P. M. Monday through Friday.

The Claimant's vacation entitlement is fifteen work days, and in accordance with seniority and Claimant's request his vacation was scheduled from September 12 through September 30, 1960.

From September 1 to 14, 1960, a strike occurred and all Carrier facilities were shut down. On September 3, 1960, the Carrier posted notices at all picketed points that all positions and jobs were abolished effective September 3, 1960.

The dispute was settled on September 12, 1960 at about 3:00 A. M. and it was the Organization's understanding that all employees would be returned

to work within forty-eight hours from the start of the first trick on that date. The Carrier contends that it did not call any vacationing employees to return to work on September 14, 1960. However, many vacationing employees did report for work on that date. This precipitated a conference between the Organization and the Carrier wherein the parties agreed at 11:00 A. M. on September 14, 1960, that any vacations scheduled between September 1st and the 16th, 1960, would be cancelled.

The Claimant reported for work at 7:00 A. M. on September 14, 1960, and he was told that he was on vacation and then sent home. At noon, on that same day, the Carrier called and instructed the Claimant to return to work, which the Claimant did at 1:30 P. M.— and continued working until 3:30 P. M. For this service, the Claimant received two hours of straight time pay.

The Claimant's vacation was subsequently re-scheduled for the period from September 19, 1960 through October 7, 1960.

Seven other disputes are held in abeyance pending the outcome of this case.

It would serve no useful purpose to repeat here the contentions and claims of the Carrier and the Organization — which are stated above.

The Board has reviewed, studied, and analyzed the entire record in this case very carefully. It seems to the Board that the controlling aspect of this case is the Carrier's action of September 3, 1960, when the Carrier posted notices, abolishing all positions and jobs. The Carrier did not deny — on the property — the Organization's assertion that the purpose of that notice was to protect the Carrier from having to pay vacation claims to striking employees.

Accordingly, the Board must rule that the Claimant was justified in reporting to work at 7:00 A. M. on September 14, 1960 and that he must be paid an additional six hours of straight time pay for that day.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February, 1963.