

Award No. 4322
Docket No. 4110
2-P&LE-TWUOA-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Ben Harwood when the award was rendered.

PARTIES TO DISPUTE:

**RAILROAD DIVISION, TRANSPORT WORKERS UNION OF
AMERICA, A. F. of L. - C. I. O.**

**THE PITTSBURGH & LAKE ERIE RAILROAD COMPANY AND
THE LAKE ERIE & EASTERN RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYEES:

(1) That under the current agreement, the carrier violated the controlling agreement and particularly Rule 34(c) as amended, when Car Inspector John Bacha was on September 5, 1960, denied the right to work on the vacation vacancy caused by Car Inspector Charles Herron being on his scheduled vacation September 5, thru September 23, 1960, inclusive.

(2) That accordingly, the carrier be ordered to compensate Car Inspector John Bacha in the amount of eight (8) hours at the time and one-half rate of pay of the position that he was denied to work on for Labor Day, September 5, 1960.

EMPLOYEES STATEMENT OF FACTS: John Bacha, hereinafter referred to as the claimant, was employed by the Pittsburgh and Lake Erie Railroad Company, hereinafter referred to as the carrier, as a Car Inspector, (Carmen) at Struthers, Ohio.

Claimant was on the car inspectors extra board and for the period August 24 thru September 3, 1960, inclusive, was assigned to work on a third shift temporary vacancy due to a car inspector being on vacation. Effective Monday, September 5, 1960 car inspector Charles Herron, who held a regular second shift assignment, started on his scheduled vacation. Claimant Bacha prior to September 5, 1960 made a written request to the management to be permitted to work the vacation vacancy of Charles Herron beginning September 5, 1960, this request was denied to Bacha.

This dispute was handled with carrier officials designated to handle such affairs, who all declined to adjust the matter.

The Agreement effective May 1, 1948, as subsequently amended, is controlling, and is by reference herein made a part of these statement of facts.

Vacation Agreement of December 17, 1941.

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.

As appears from exhibit in Employees' Submission of this claim, Car Inspector John Bacha, well before September 5, 1960, to wit, on August 29, 1960, made a written request to the management to be permitted to work the vacation vacancy of Car Inspector Charles Herron, beginning on September 5, 1960. This request was made in writing pursuant to Rule 34c of the applicable agreement between the parties, effective May 1, 1948, which had been subsequently amended May 31, 1956, so that it no longer excepted vacation vacancies but permitted requests to work them, just as it provided for such requests as to other temporary vacancies.

Monday, September 5, 1960, was Labor Day. On the morning of that day, Inspector Bacha "was advised that he was awarded the hold down on Inspector Herron's assignment"—this, as contained in Carrier's Statement of Facts: further, it was there said that "at the same time he was advised that this assignment was being blanked for one day and he would not work that day" September 5th; also that "he first worked this vacation vacancy on Tuesday, September 6th and continued thereon for the duration of Inspector Herron's vacation."

In part here pertinent, Rule 3(h) reads:

"* * * Forty-eight (48) hours notice will be given to employe or employes when jobs are cut off in accordance with the above."

On September 2, 1960, a bulletin was issued by management saying certain jobs would not work Monday, September 5, 1960, naming some twelve men concerned, but no mention was made in that or any other bulletin of blanking the job of Charles Herron, the vacation vacancy of which Claimant Bacha had already filed request to fill. As set forth in Rule 3(h) quoted above, the latter job also could have been cut off by giving forty-eight hours notice, but this was not done and, after being told he had received the assignment of the vacation vacancy of Charles Herron, Claimant received no previous notice at all, such as the rule provides, that the job was to be cut off that day.

Under the admitted facts of this case and the Agreement rules which control (See Award 1514), we are of the opinion that there was a violation thereof by Carrier in the situation here presented and that this claim should be sustained. And inasmuch as it may be assumed from the record that Claimant had reported ready for work on the morning of September 5th, when he was refused improperly the opportunity, it seems proper that he be paid for eight hours at the holiday rate of time and one-half prescribed by Rule 3(f), as requested in claim filed in his behalf by the Organization.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 7th day of October, 1963.

DISSENT OF CARRIER MEMBERS TO AWARD 4322

The record shows the vacation vacancy that claimant was holding down was blanked under the vacation rules of the agreement and that claimant performed no work on the date involved in this dispute.

The majority therefore have erroneously found claimant entitled to compensation. The majority have compounded the error in allowing pay at the time and one-half rate for work not performed.

There is a long line of awards on this and other Divisions of the Adjustment Board which provide that the proper rate of pay for work not performed is the pro rata rate. See, among others, the following awards of the Second Division: 3602, 3629, 3633, 3657, 3903, 3932, 4043, 4085, 4141, 4193 and 4229.

The award is erroneous and we dissent.

H. K. Hagerman
F. B. Butler
P. R. Humphreys
W. B. Jones
C. H. Manoogian