

Award No. 4364
Docket No. 4315
2-PRR-MA-'63

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Joseph M. McDonald when 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 violated the provisions of Rule 2-A-5 when it did not fill the Machinists vacancy of K. E. Reddick on November 7 and 14, 1960.

2. That the Carrier be ordered to compensate Machinist H. E. Todd eight (8) hours Grade "E" pro rata rate of pay for November 7 and 14, 1960.

EMPLOYES STATEMENT OF FACTS: Machinist H. E. Todd, hereinafter referred to as the claimant is employed by the Pennsylvania Railroad Company, hereinafter referred to as the carrier, at Hawthorne Enginehouse, Indianapolis, Indiana, which is part of the Southwestern Region.

On November 7 and 14, 1960, Machinist K. E. Reddick, was taken off his regular assignment as machinist to fill a vacancy of a gang foreman, who was off on those two dates, thereby creating a vacancy in the machinist craft forces.

On September 12, 1960, an agreement was signed by System Federation No. 152, general chairmen and carrier representatives, to become effective October 15, 1960. Rule 2-A-5, the rule that is involved in this dispute, was one of the rules that was contained in the agreement signed September 12, 1960, which had some language in it that made the rule mandatory in its provisions.

Not once during the handling of this claim by the committeeman or the local chairman did the management mention anything whatsoever about not being able to reach agreement with the local chairman nor committeeman in connection with filling Reddick's position as specified in Rule 2-A-5.

This dispute has been handled, in writing, by the committeeman of Lodge 1244, International Association of Machinists, under date of November 20, 1960, with the Hawthorne enginehouse foreman. Denied by the foreman, in

justment Board, Second Division, Is Required To Give Effect To The Said Agreements 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 Agreements, which constitute the applicable agreements between the parties, 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 them. 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 shown that the rules agreement was not violated and that the claimant is not entitled to the compensation claimed.

Therefore, the carrier respectfully submits that your Honorable Board should dismiss or 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 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.

Claimant was a Machinist at the Hawthorne Enginehouse at Indianapolis with a tour of duty from 10:00 P. M. to 6:00 A. M.

K. E. Reddick, a Machinist, was taken off his regular assignment on November 7th, and 14th, 1960 and used to fill a position as Gang Foreman on those dates. Reddick's position was blanked and it is Claimant's contention that he was available and should have been used to fill the vacancies on the dates in question.

It is the Carrier's contention that it had a right to blank the position when the provisions of Rule 2-A-5 could not be complied with.

Claimant contends that Rule 2-A-5 requires that day-to-day vacancies must be filled, and that Carrier has no right to blank any vacancy under the Rule.

Rule 2-A-5 reads as follows:

"2-A-5 (Effective 10-15-61) Day-to-day vacancies in regularly assigned positions (not including vacation vacancies) or in advertised positions temporarily vacant pending award, must be filled and will be assigned by mutual agreement between the Foreman and the designated representative. In the event mutual agreement is not reached, such vacancies will be assigned in accordance with the following procedures:

"1. In filling mechanic assignments where a higher grade rate would be involved, the assignment shall first be offered to the senior qualified mechanic regularly employed at a lower grade rate, working on the trick, at the location and in the craft where the position or vacancy exists.

"2. Mechanic assignments not filled in accordance with paragraph 1 hereof shall be offered to the senior qualified employe with mechanic seniority in the craft involved working in a lower class on the trick and at the location where the position or vacancy exists.

"3. If mechanic assignments cannot be filled in accordance with paragraphs 1 and 2 hereof, they shall be offered to qualified available employes possessing seniority in the craft only as helpers and working as helpers or in a lower class on the trick and at the location where the position or vacancy exists.

"If mechanic assignments cannot be filled in accordance with the foregoing provisions of paragraphs 1, 2 or 3, they shall be assigned to the junior qualified employes possessing seniority in the craft working on the trick and at the location where the position or vacancy exists.

"4. Helper assignments shall be offered to the senior qualified employe with helper seniority in the craft involved working in a lower class on the trick and at the location where the vacancy exists.

"5. Helper assignments which cannot be filled in accordance with the foregoing provisions shall be offered to senior qualified Laborer or Coach Cleaner employed as such, on the trick and at the location, with seniority in another craft.

"6. In the event that helper assignments cannot be filled in accordance with any of the foregoing provisions, the junior qualified Laborer or Coach Cleaner employed as such, on the trick and at the location, shall be assigned.

"NOTE: This rule cannot be used to augment the force over and above the number of bulletined positions."

There is some dispute as to whether the parties attempted to reach a mutual agreement in filling the vacancy. We find that there was an attempt even though meagre.

It will be noted that Claimant was off duty, and his availability would be at the overtime rate. It was agreed by the parties that the position could not be filled by resort to paragraphs of Rule 2-A-5.

The questions to be determined are whether the Rule requires a position to be filled, even if resort must be had to overtime employes, or can a position be blanked if the steps provided for in the Rule are exhausted and no employe as listed therein can be found?

We find that the parties to the agreement spelled out the procedure for filling day-to-day vacancies in detail, and confined themselves to that procedure. Nowhere does the Rule provide for filling these vacancies from overtime employes. Accordingly the Claim here must be denied.

AWARD

Claim denied.

By Order of SECOND DIVISION
NATIONAL RAILROAD ADJUSTMENT BOARD

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 20th day of December, 1963.