

Award No. 4428

Docket No. 4365

2-PRR-MA-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee J. Harvey Daly 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 the Carrier violated the controlling Agreement from March 22, 1961 to April 3, 1961, when it failed to apply the provisions of Rule 2-A-5, account of F. B. Caudill, Machinist, being off duty due to an accident on those dates.

2. That the Carrier be ordered to compensate Horace Lee, senior furloughed Machinist eight (8) hours Grade "E" rate of pay from March 22, 1961 to April 3, 1961, account of not filling the machinist vacancy of F. B. Caudill.

EMPLOYEES' STATEMENT OF FACTS: On Tuesday, March 21, 1961, F. B. Caudill, machinist in machine shop section of Columbus shops with a tour of duty 7:00 A.M. to 3:30 P.M., rest days Saturday and Sunday, was injured in an automobile accident while on duty, which created a vacancy in the machinist craft.

On March 22, 1961, the foreman and local chairman conferred and agreed that I. R. Zitzke, working in the diesel shop should fill the vacancy. Mr. Zitzke would not accept the offer account of the diesel shop foreman not being desirous of releasing him.

When Zitzke would not accept the assignment to fill Caudill's vacancy, the local chairman made several attempts to meet with Foreman C. V. Carter, wanting to fill the vacancy. The foreman declined to discuss the matter any further or to even meet with him in connection with filling the vacancy of Caudill.

Horace Lee was furloughed as a machinist April 12, 1960 and, at the time of the instant dispute he had not been recalled to service. He was the senior furloughed machinist and next to be recalled to active service.

After C. V. Carter, foreman, machine shop, refused to meet with the local chairman in connection with filling Caudill's vacancy, a claim was filed

out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions, . . . shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but failing to reach an adjustment in this manner, the disputes may be referred to . . . the appropriate division of the Adjustment Board . . .” (Emphasis ours)

The carrier respectfully submits for all the foregoing reasons the claim of the organization is wholly lacking in merit under the terms of the agreement and should be dismissed or denied.

III. Under The Railway Labor Act, The National Railroad Adjustment Board, Second Division, Is Required To Give Effect To The Said Agreement 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 agreement, which constitutes the applicable agreement 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 grant the claim of the employes 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, in any event, 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 employes 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 employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 2, 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.

On Tuesday, March 21, 1961, Machinist F. B. Caudill, who worked from 7:00 A. M. to 3:30 P. M. Monday through Friday at Carrier's Columbus, Ohio

Machine Shop, was injured in an on-duty automobile accident—thereby creating a vacancy.

On March 22, 1961, the Local Chairman and Machine Shop Foreman C. V. Carter agreed that Machinist J. R. Zitzke should fill the vacancy but Mr. Zitzke would not accept the job offer, nor was his Diesel Shop Foreman inclined to release him.

Further efforts on the part of the Local Chairman to meet with Foreman Carter and discuss a replacement for job vacancy were unproductive. Accordingly, the Organization filed a claim on behalf of the senior furloughed Machinist, Horace Lee, who was on furlough since April 12, 1960.

Rule 2-A-5, effective October 15, 1961, is controlling in this case. The pertinent provisions of that Rule read as follows:

“Day-to-day vacancies in regularly assigned positions * * * 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 assignment * * * the assignment shall first be offered to the senior qualified mechanic regularly employed at 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 mechanic regularly employed at lower grade rate, working on the trick, at the location and in the craft where the position or vacancy exists.”

3. (Second paragraph.)

“If mechanics assignments cannot be filled in accordance with * * * 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.”

The Claimant, a furloughed employe, has no entitlement whatsoever to the job in question under any of the pertinent provisions cited above. Therefore, part two of the claim is dismissed.

In regard to part one of the claim, the record indicates that the Local Chairman and Foreman Carter met on only one occasion in a mutual effort to select a replacement for Mr. Caudill. We do not believe that such meager effort is in keeping with both the spirit and language of Rule 2-A-5. It is the Board's conviction that the efforts of the parties must be of such substantial nature as to persuade, if necessary, a third party as to the sincerity of their efforts in full compliance with the above Rule. Certainly this was not

done in the instant case and, therefore, we must sustain part one of the claim.

AWARD

Part 1—sustained.

Part 2—dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **SECOND DIVISION**

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 26th day of February, 1964.