

Award No. 4720

Docket No. 4601

2-PRR-MA-'65

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Dudley E. Whiting 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 Agreement on August 16, and September 6, 13, and 20, 1962, by refusing to fill the vacant position of Machinist Lawrence Zimmerman on those dates.

2. That the Carrier be required to compensate Machinist D. S. Knaby at the applicable rate for eight (8) hours on each of the dates of August 16, September 6, 13, and 20, 1962.

EMPLOYEES' STATEMENT OF FACTS: Machinist D. S. Knaby, hereinafter referred to as the claimant, is regularly employed by the Pennsylvania Railroad Company, hereinafter referred to as the carrier, as a machinist on the "C" trick at the carrier's enginehouse at Enola, Pa., with regularly assigned rest days of Wednesday and Thursday.

The dates specified in the claim are in each instance one of the regularly assigned rest days of the claimant.

On the "C" trick at Enola Enginehouse on the dates specified in the claim, the Grade D machinist-inspector position of R. E. Amey became vacant when local management assigned Amey to the position of gang foreman. Grade E Machinist Lawrence Zimmerman was then step-rated to Grade D machinist and assigned to fill the vacant position of R. E. Amey, thus leaving a vacancy in the Grade E machinist position of Zimmerman.

The local management and the authorized union representative consulted with respect to filling Machinist Zimmerman's vacancy and during the consultation the local management informed the union representative that there were no employees available on the trick and at the location who could be step-rated under the provisions of the procedures Nos. 1 to 3 inclusive of Rule 2-A-5 to fill Zimmerman's vacant position. Rule 2-A-5 of the agreement is the applicable rule for filling day-to-day vacancies.

The local union representative insisted that the vacancy be filled, as required by the agreement, and suggested that in the absence of any other readily

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, that the claimant is not entitled to the compensation claimed, and that the question, at issue has been decided in carrier's favor by Award 4364.

Therefore, the carrier respectfully submits that your honorable board should dismiss or deny the claim of the employe 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 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.

On the dates specified in the claim a Grade D Machinist was assigned to fill a vacancy as Gang Foreman. The vacancy in Grade D was filled by step-rating a Grade E Machinist pursuant to Rule 2-A-5. Local management and the authorized Union representative consulted about filling that vacancy without reaching agreement. There were no employes on the trick who could be step-rated. The Union representative insisted that the vacancy be filled by the senior available machinist on rest day. Local management declined the request to fill the vacancy at overtime rate of pay and the position was blanked.

Rule 2-A-5 was negotiated simultaneously with Regulation 2-A-4 of the agreement with TWUA, which has the same phrase—"must be filled and shall be assigned". The issue of whether the Company was required to go beyond the procedure provided and assign qualified employes at overtime rates thereunder was submitted to Arbitration Board No. 262. The neutral and sole member of that board had participated as a neutral in the negotiations. His award was that the Company was not required to go beyond the procedure established by the rule in attempting to fill such a vacancy and could blank such position if not filled thereby.

The issue here presented was decided in our Award No. 4364, involving the same parties and the same agreement provisions, in which we said:

"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".

In our Award No. 4428 we held that the attempt at agreement was not in keeping with the spirit and language of the Rule. It did not involve a claim for overtime assignment but a claim by a furloughed employe. Our Award No. 4486 is not pertinent because the findings indicate that the Carrier contended that no vacancy existed subject to Rule 2-A-5 and there had been no attempt to obtain agreement with a Union representative. This was the agreement vio-

lation upon which the claim was sustained and it is not a precedent for the contention herein that, after the 2-A-5 procedures are exhausted, vacancies must be filled on overtime..

Under the circumstances shown, neither the agreement nor the prior decisions support the claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 19th day of May, 1965.