

Award No. 5155

Docket No. 4880

2-PRR-MA-'67

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 152, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Machinists)**

THE PENNSYLVANIA RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the controlling agreement furloughed Machinist W. G. Cutler was entitled to be awarded the Machinist position at Mt. Vernon, Ohio, as advertised on Bulletin No. 35, dated December 4, 1961, Canton, Ohio Seniority District.
2. That the Carrier unjustly deprived W. G. Cutler of his seniority rights under Rule 2-A-1 of the Agreement.
3. That accordingly the Carrier be ordered to compensate W. G. Cutler for all monetary loss at the applicable Grade+6 cent rate of pay, retroactive to December 12, 1961.

EMPLOYEES' STATEMENT OF FACTS: W. G. Cutler, hereinafter referred to as the claimant, was employed by the Pennsylvania Railroad Company, hereinafter referred to as the carrier, at the carrier's Canton Enginehouse, Canton, Ohio. Claimant is shown on the machinist craft roster with a machinist and machinist helper seniority date of June 23, 1942. Claimant was in the status of a furloughed employee during the time the machinist position at Mt. Vernon, Ohio was advertised under date of December 4, 1961, on Bulletin No. 35.

Mt. Vernon, Ohio, is within the confines of the merger Akron-New Philadelphia-Canton-Alliance-Orrville Seniority District for machinists and machinist helpers.

Claimant began his machinist apprenticeship at Canton, Ohio, on June 23, 1942, and completed his machinist apprenticeship on July 16, 1949. Claimant was given a certificate of completion of apprenticeship, stating that he had performed 15 months' work on inspection and repairs to locomotive air brake equipment, and was qualified as a machinist.

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.

The Claimant's bid and application for the position as advertised on December 4, 1961 in bulletin 35 came too late.

The Claimant's bid and application for the position was to be in the office of the Enginehouse Foreman, "no later than December 11, 1961, at 9:00 A. M."

An undated letter for the position was in an envelope postmarked Canton, Ohio 11 A. M. December 18, 1961. The envelope was postmarked seven (7) days subsequent to the close of the period specified for filing bids and/or applications.

Claimant's said application and bid was not filed in time. The agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 28th day of April, 1967.

LABOR MEMBERS' DISSENT TO AWARD 5155

MACHINISTS vs. PENNSYLVANIA RAILROAD COMPANY

The Referee and Carrier members constituting the majority in this instant award are in error in their findings, when they stated:

"The claimant's bid and application for position as advertised on December 4, 1961, in Bulletin 35, came too late.

The claimant's bid and application for the position was to be in the office of the Engine House Foreman, 'no later than December 11, 1961, at 9:00 A. M.'

An undated letter for the position was in an envelope marked Canton, Ohio, 11:00 A. M., December 18, 1961. The envelope was

postmarked seven (7) days subsequent to the close of the period specified for filing bids and/or applications.

Claimant's said application and bid was not filed in time. The agreement was not violated."

This erroneous and untenable contention is not in keeping with the shop craft agreement Rule 2-A-1 (f), and is in violation of the National Railroad Adjustment Board's own rules and the special rules of the Second Division. Circular No. 1 of the National Railroad Adjustment Board reads in pertinent part:

**"FORM OF SUBMISSION
(POSITION OF EMPLOYES)**

Under this caption, the employees must clearly and briefly set forth all relevant, argumentative facts, including all documentary evidence submitted in exhibit form, quoting the agreement or rules involved, if any; and all data submitted in support of employee's position must affirmatively show the same to have been presented to the Carrier and made a part of the particular question in dispute. (Emphasis ours.)

**FORM OF SUBMISSION
(POSITION OF CARRIER)**

Under this caption, the Carrier must clearly and briefly set forth all relevant, argumentative facts, including all documentary evidence . . . must affirmatively show the same to have been presented to the Employee or duly authorized representative thereof and made a part of the particular question in dispute . . ." (Emphasis ours.)

Further, the Second Division Circular "A", dated June 1, 1936, and renewed every fiscal year up to and including this date, states in pertinent part:

"POSITION OF (EMPLOYES OR CARRIERS): Under this caption, the Employees (or Carrier) must clearly and briefly set forth all relevant, argumentative facts, including all documentary evidence submitted in exhibit form, quoting the agreement or rule involved; and all data submitted in support of (Employees or Carriers) position must affirmatively show the same to have been presented to the (Carrier) or (Employees) or duly authorized representative thereof, and made part of the particular question in dispute.

We are continually confronted during hearings with requests for the admission of evidence and documents which are not contained in the original submission to the Division, and in many cases not the subject of negotiation during the conference on the property. The Second Division, therefore, requests that all parties to a dispute coming before this Division, comply fully with the above excerpt from Circular No. 1 to the end that unnecessary delay and proper non-acceptance of evidence which may be of importance, will thus be obviated." (Emphasis ours.)

This Division, as a whole, years ago, realized that the parties coming to this Division were not complying with the rules of the National Railroad

Adjustment Board, and the special rules of the Second Division. Therefore, in Executive Session on November 30, 1968, adopted a submission form to be used by parties who desire to submit disputes to the Second Division in accordance with Circular No. 1 and Resolution A. This adopted form states among other things as instructions to the Petitioners:

"A paragraph should be inserted here, showing that all data submitted in support of your position had been presented to the other party to the dispute and made a part of the particular question in dispute." (Emphasis ours.)

In view of the special efforts taken by this Division as a whole, it is reasonable to understand that the Board's own rules should be abundantly clear to the members of this Division. Therefore, the integrity of these rules should be maintained, irrespective of the partisan membership.

The record before the Division, sitting with the Referee, reflects that the claim and dispute before them was processed up to the highest officer of the Carrier designated to handle such disputes. There is nothing in the record as a whole to show that the Carrier's officers on the property ever put forth the contention that the claimant's bid for Bulletin Position No. 35 was filed too late.

Employes' Exhibit B reflects this evidence in an agreed to joint statement of facts by the Carrier's officer and the Union's Shop Committeeman, which was dated February 28, 1964. We quote in pertinent part from the Joint Statement of Agreed Upon Facts:

"Claimant W. G. Cutler began apprenticeship as a Machinist, effective January 28, 1946, and completed this apprenticeship effective July 16, 1949. . . . Bulletin No. 35 dated December 4, 1961, advertised position of Machinist at Mt. Vernon, Ohio; and this Bulletin will be Exhibit No. 1.

Claimant was furloughed in force reduction as a Machinist Helper, effective 9/13/61 and filed application for position of Machinist advertised in Bulletin No. 35. This grievance has been processed to all levels of the grievance procedure in accordance with the provisions of Article V of the August 21, 1954, agreement."

It can be readily ascertained from this quotation by both parties that no mention of time limits relative to application or bid by claimant was ever considered in this agreed to joint statement.

Further, under "Position of Company", the Carrier made no contention relative to timeliness of the claimant's bid; but did state among other things:

"Rule 2-A-1, plus the fact that claimant Cutler made application for this Air Brake Machinist Position is not disputed."
(Emphasis ours.)

The Carrier did not make the untimely filing contention at any stage of the grievance procedure on the property. Three years and nine months after the original claim was filed, the Carrier came for the first time with this new contention when they filed their submission before this Division.

The Carrier's attempt at a new hold was objected to by the claimant's Union representatives in their rebuttal to the Carrier's submission, pointing out that it was a violation of the Board's rules. This argument and request for a ruling of the Referee was reiterated by the Union's representative on this Division while in referee argument.

A perusal of this denial award only shows that the Referee did not rule on this objection, but seized the opportunity to deny the claimant's just claim solely on this improper point of argument. We contend that the injection of the time limit question by the Carrier into the proceedings at such late date, was for no other reason than to sabotage the orderly process, confuse the issue and gain unfair advantage by being relieved of its obligation under the Shop Craft Agreement Rule 2-A-1(f), which gives extended consideration to furloughed employees with seniority in the craft.

RULE 2-A-1(f).

"Furloughed employees with seniority in the craft and class, who are furloughed from the class in which the position or vacancy exists or who are furloughed from a lower class, **will be considered as having bid for the vacancy.** If entitled to the position or vacancy, it will be awarded to him; and he will be recalled from furlough."
(Emphasis ours.)

By virtue of the language in Paragraph (f), as quoted above, no written bid was actually necessary from this furloughed claimant who held rights in the Machinists craft where the position was bulletined. It follows that the Carrier's late contention is without merit on the face of the agreement itself. With this fact, fortified by the rules of this Division, the Carrier's contention of untimely filing of a bid should have been rightfully rejected by this Division.

In view of the erroneous conclusions of the majority in Award No. 5155, the claimant was denied full consideration and due process on the merits of his dispute.

We are constrained to a vigorous dissent.

**R. E. Stenzinger
E. J. McDermott
C. E. Bagwell
O. L. Wertz
D. S. Anderson**