

Award No. 5246
 Docket No. 5370-I
 2-P&LE-I-'67

NATIONAL RAILROAD ADJUSTMENT BOARD
 SECOND DIVISION

PARTIES TO DISPUTE:

FRANK PFEIFER, PETITIONER

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

DISPUTE: CLAIM OF EMPLOYES:

After a pensioned man died, the Carrier and Union realized he had been retired for two years and two months, at which time his job should have been advertised. The Carrier as you can see by my exhibits, reluctantly went along with the Union's decision to advertise this job 26 months late. Surely any reasonable time limit has long since passed. I feel I have been unjustly dealt with, therefore am appealing to this honorable Board to reverse the decision to advertise my job. The job was advertised and awarded to another man who did not want it prior to this time.

EMPLOYES' STATEMENT OF FACTS: I owned a permanent job, No. 109 which is the job in question in this case. An older man, Mr. Bennett, bumped me and soon after the job was advertised due to a differential rate being added to the job. Mr. Bennett bid this job and was awarded same.

Some months later Mr. Bennett became ill and took a sick leave. His job was advertised temporary pending his return. I bid in and was awarded this No. 109 job again. This was my job until and when Mr. Bennett died at which time it was brought to light that he had been on permanent pension for two years and two months prior to his death. This of course meant the job should have been advertised twenty six months before the man died.

Being embarrassed by the state of events, especially in view of the fact that Mr. Bennett had been an A member and they had been paying him his \$50 check for 26 months, the organization immediately posted the advertisement. The advertisement was removed by the carrier, posted again by union influence, removed by carrier and finally posted to stay by the organization. This action obviously indicated a disagreement existed between Carrier and Union. However, I entered my bid on the job but this time it was awarded to a man who never wanted it in the past. I was next on the bid.

I feel that in view of the fact that I owned the job even before Mr. Bennett, and I was awarded the job when he took his sick leave, I would have had a

While the claimant may feel that the operation of the agreement has acted to his detriment, Carrier and Organization, acting together for the good of all employes, have the power and the right to protect the seniority rights of all employes, including the claimant. Mr. Pfeifer's claim has not support under the agreement and should be denied.

CONCLUSION: Carrier has conclusively shown that the instant claim should be dismissed on the basis that the claimant has not complied with the provisions of the Railway Labor Act and the grievance procedures established under the Shop Crafts Agreement by his failure to handle his dispute in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes.

Should this claim not be dismissed, Carrier has shown that it lacks merit. The Electrician's Committee, the duly authorized and accredited representatives of the craft in which the claimant is employed, is in full accord with the handling of the matter on the property and does not support the position taken by the claimant. Also, Mr. Pfeifer has based his claim of being aggrieved solely on his personal feelings and opinions and has not cited rules of the agreement to support his position.

Carrier respectfully submits therefore that if the claim is not dismissed, it should be denied as being without merit.

All data incorporated herein have been made known or available to the petitioner.

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 Railway Labor Act contemplates that before a grievance can be brought to this Board it "shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such dispute". This was not done with respect to the claim that is pending before this Board.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 8th day of September 1967.

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