

Award No. 3219

Docket No. 3097

2-GN-F&O-'59

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee D. Emmett Ferguson when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 101, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L.—C. I. O. (Firemen and Oilers)**

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Diesel Shop Laborers F. Waggoner, E. Zarn, O. Shore, G. Johnson, H. Carlson and A. Passon were improperly denied the right to work New Years Day, January 1, 1958.

2. That accordingly the Carrier be ordered to compensate the aforesaid employees each in the amount of eight (8) hours pay at the applicable time and one-half rate for January 1, 1958.

EMPLOYEES' STATEMENT OF FACTS: At the Havre Diesel Shop, Havre, Montana, the Great Northern Railway Company, hereinafter referred to as the carrier, there were employed prior to and following New Years Day, January 1, 1958, on Sundays, a regular assigned work force of ten laborers on the first shift, seven laborers on the second shift and six laborers on the third shift.

On January 1, 1958 the carrier reduced the force on the first shift to nine laborers, on the second shift to four laborers and on the third shift to four laborers.

The claimants were not permitted to work New Years Day, January 1, 1958.

The agreement effective September 1, 1949, as subsequently amended, is controlling.

POSITION OF EMPLOYEES: It is submitted that the facts show that the carrier employed ten laborers on the first shift, seven laborers on the second

"2. That, accordingly, the Carrier be ordered to compensate the aforesaid employees each in the amount of 8 hours pay at the applicable time and one-half rate for September 6, 1954."

In **Award No. 2471**, Second Division of the NRAB, with Referee Schedler, it was stated in the findings:

"This case is identical with Award No. 2070 (Docket No. 1961) wherein the claim was denied, except in the instant case the classification of workers is different. We find nothing in the record in this case which would justify a different award.

AWARD

"Claim denied."

Since this instant claim of the carmen of this property involves a dispute identical to those contained in Second Division **Awards Nos. 2070, 2097 and 2471** and in which awards **the claims of the employees were denied**, your Board must also find the instant claim of no merit whatsoever and render a denial decision consistent with the decisions of the afore-mentioned Second Division denial awards.

CONCLUSION

In effect, the employees herein are attempting through the medium of your Board to amend the guarantee rule of their agreement by having you hold that a purely oral statement is a new guarantee rule in the agreement, contrary to the provisions of the one now contained. That is beyond the power of this tribunal. The present rules makes no requirement relative to any number of employees to be worked on holidays; nor do they specify any restrictions on management as to the number of employees who may or may not be worked on such holidays. Such restrictions cannot be added to the schedule by Board dictate.

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 employees 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.

Our decision in Award No. 3216 (Docket No. 3089), has controlling effect herein.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 25th day of May 1959.

**DISSENT OF LABOR MEMBERS TO AWARDS NOS. 3216, 3217, 3218,
AND 3219.**

The premise that the understanding of 1950 is an "at will" contract terminable by either party with or without reason is fallacious. Ignored or overlooked is the fact that the understanding was reached when, in accordance with Section 2 Second of the Railway Labor Act, the matter was decided in conference between the representatives of the carrier and the representatives of the employees. The understanding acquired added force from the fact that for four years it was honored as an agreement and the fact that it was so recognized and described in the carrier's letters of October 11 and October 19, 1954 seeking to terminate the agreement. Clearly the understanding relates to a working condition and the only way in which it could validly be changed or modified is in accordance with the "General Duties" of the Railway Labor Act.

The same question between the same parties was considered by this Board in Awards Nos. 2378 to 2383, inclusive, and in each instance the claim was sustained. There is nothing present in this case to justify the instant denial award.

James B. Zink

R. W. Blake

Charles E. Goodlin

T. E. Losey

Edward W. Wiesner