

Award No. 1619

Docket No. 1491

2-PULL-EW-'53

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Carroll R. Daugherty when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 122, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Electrical Workers)**

THE PULLMAN COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement the Carrier on February 1, 1951 improperly promoted Electrician J. A. Kray who was in seniority position No. 13 on the 1951 Electrical seniority roster.

2. That accordingly the Carrier be ordered to:

- (a) Promote Electrician F. E. White who is a senior qualified electrician to J. A. Kray.
- (b) Compensate Electrician F. E. White the difference in pay from what he did earn as an electrician and what he could have earned as a supervisor, retroactive to February 1, 1951.
- (c) Give Electrician F. E. White a seniority date as a supervisor as of February 1, 1951.

EMPLOYEES' STATEMENT OF FACTS: Electrician F. E. White, hereinafter referred to as the claimant, was in seniority position No. 4, and that Electrician J. A. Kray was in seniority position No. 13, on the 1951 electricians' seniority roster of the Chicago West District, a copy of which is submitted herewith and identified as Exhibit A.

The carrier on February 1, 1951, promoted Electrician J. A. Kray to a supervisory position.

The agreement effective July 1, 1948, as subsequently amended, is controlling.

POSITION OF EMPLOYEES: It is submitted that the action of the carrier in the instant dispute is contrary to the provisions of the current agreement as the claimant was the senior electrician, qualified for a supervisory posi-

cuted by a carrier and its associated employees. This limitation of the Board is bottomed upon the right of freedom of contract, sound principles of jurisprudence, and common sense. The Board has no authority to read into a contract that which its makers have not put there expressly, or by clear implication. The Board has said so many times. As noted in Award No. 5288, page 3 (1st Division, Hon. Edward F. Carter, Referee), the Board has no power to rewrite the contract or to relegate to itself the powers and duties of the parties. And in Award No. 5396, page 8, (1st Division, Hon. Robert G. Simmons, Referee): 'In the absence of rules clearly establishing the right it will not be held that the carriers and employees contracted to pay and to be paid two days' pay for one day's work. In the instant case, the established practice followed, without objection, by both carriers and employees over a long period of time supports the position taken by the carrier in the construction of the cited rules.' Of course, repeated breaches do not abrogate a clearly expressed contract provision, but where the contract is silent, or the meaning of a provision is not clear, the long-continued practice of the parties is most persuasive proof that the practice was within the purview of the contract, and the intention of the parties. Such practical construction of a contract should not be brushed aside by any tribunal. This tribunal may only determine the question of where the parties have placed themselves by their own agreement."

The company submits that the instant claim for the reasons above stated should be denied.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

The parties to said dispute were given due notice of hearing thereon.

Effective February 1, 1951, electrician J. A. Kray, number 13 on the Electricians' seniority roster of the carrier's Chicago, Western District at that time, was promoted to the position of temporary assistant foreman in the Pennsylvania Yards of that District.

The Organization's claim is in behalf of electrician F. E. White, who stood number 4 on the above-mentioned roster on the above-mentioned date.

Applying to the facts of the instant case the principles and reasoning set forth in our Award No. 1600, we find no violation of the parties' agreement by the carrier here.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 7th day of January, 1953.