Award No. 2378
Docket No. 2013
2-GN-CM-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Adolph E. Wenke when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 101, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Carmen)

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreement Car Inspectors Arnold Jackson, Paul Allen, Donald Friedrich, Alvin Morden, Charlie Harris and Milton Couch were improperly denied the right to work Thanksgiving Day, November 25, 1954.

2. That accordingly the Carrier be ordered to compensate the aforesaid employes each in the amount of 8 hours pay at the applicable time and one-half rate for November 25, 1954.

EMPLOYES' STATEMENT OF FACTS: At Wenatchee, Washington, the carrier on Sunday, November 21, 1954 and on Sundays prior to and subsequent to that date, employed 4 inspectors on the First Shift, 6 inspectors on the Second Shift and 6 inspectors on the Third Shift.

On Thanksgiving Day, November 25, 1954, the carrier reduced the force to three inspectors on the First Shift, 3 inspectors on the Second Shift, and 4 inspectors on the Third Shift.

The above named car inspectors (hereinafter referred to as the claimants) are assigned to jobs of which Thursdays are a regular work day.

The claimants were not permitted to work on Thursday, November 25, 1954, and claims presented and handled with carrier officials designated to handle such affairs, who all declined to adjust the matter.

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

POSITION OF EMPLOYES: It is submitted that the facts show that the carrier employed 4 inspectors on the First Shift, 6 inspectors on the Second Shift and 6 inspectors on the Third Shift on Sundays, which means they, under Rule 11(b) c reading:

> "On positions which are filled seven days per week any two consecutive days may be the rest days with the presumption in favor of Saturday and Sunday."

established that number of seven day positions.

Such consideration was given which later resulted in the agreement being reached designated as Memorandum No. 29 which was later revised as of February 15, 1955.

Everything, therefore, it will be noted, relative to this particular Memorandum No. 16 had to do with the distribution of overtime only and had nothing whatsoever to do with providing any guarantee for any employe or employes.

The carrier holds the employes, therefore, are attempting to stretch an agreement covering only the distribution of overtime into a guarantee rule which was at no time the intent of the carrier, and we do not believe, at the time it was issued, the intent of the employes.

Due to the above, the carrier holds that the claim must 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 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.

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

The organization contends Car Inspectors Arnold Jackson, Paul Allen, Donald Friedrich, Alvin Morden, Charlie Harris and Milton Couch were all improperly denied the right to work on Thursday, Thanksgiving Day, November 25, 1954. Because of that fact it asks that we order carrier to pay each of the claimants for eight (8) hours at time and one-half the applicable rate. Thursday was a workday of each claimant's regularly assigned work week. Claimants were engaged in services for the carrier that it found necessary to have performed on seven (7) days of each week.

The facts are that at Wenatchee, Washington, where claimants are regularly employed, carrier, on Sunday, November 21, 1954, and on Sundays both prior and subsequent thereto, employed four (4) inspectors on the first shift, six (6) inspectors on the second shift and six (6) inspectors on the third shift whereas, on Thursday, Thanksgiving Day, November 25, 1954, carrier, at this same point, employed three (3) inspectors on the first shift, three (3) inspectors on the second shift and four (4) inspectors on the third shift. Carrier paid each of the claimants for eight (8) hours at the applicable straight time rate for Thanksgiving Day, as Section 1 of Article II of the August 21, 1954 Agreement provides it shall.

The organization contends carrier's failure to work these claimants on Thanksgiving Day was contrary to a verbal agreement it had made with the carrier in 1950 to the effect that forces used on holidays would not be reduced below the number worked on Sundays. It is apparent, from what we have hereinbefore set forth, that carrier, on Thanksgiving Day, reduced the force of inspectors below the force it used on Sundays immediately before and after that day.

That such an agreement was entered into is fully evidenced by a letter written by M. C. Anderson, carrier's assistant to its Vice-President, to Louis G. Lee, Secretary-Treasurer of System Federation No. 101, on October 11, 1954. Therein Anderson states:

> "* * * it is our position that the verbal understanding had with you several years ago to the effect that we would not reduce forces on holidays below that worked on Sundays was rendered void by the August 21, 1954 agreement * * *."

And again, when on October 19, 1954, Anderson wrote Lee acknowledging the agreement but contending, as before, that the verbal understanding automatically disappeared as a result of the August 21, 1954 agreement.

The general rule is that when one of the recognized legal holidays falls on a workday of a regularly assigned work week it is, in effect, an unassigned day thereof unless carrier specifically directs the occupant thereof to work it on that day. See Awards 2212, 2325 and 2358 of this Division. However, an agreement entered into whereby carrier agrees to have work performed thereon by a certain number of employes of a craft or class will take the situation out from under the general rule which is, as we have already stated, that when a recognized holiday falls on a workday of a regularly assigned work week that day is, in fact, unassigned and carrier need not work the employe assigned thereto. See Award 2282 of this Division.

We have carefully examined the report of Emergency Board No. 106, on which the agreement of August 21, 1954 is premised, as well as the agreement itself and we can find no language which would have the effect of setting aside the parties' agreement of 1950 relating to the extent to which carrier will work its forces of a certain class or craft when a recognized legal holiday falls on a workday of their regularly assigned work week. Neither do we think it was the intention of the Board, nor of the parties, to abrogate such agreements thereby. Rather, we think, it was intended to keep them in full force and effect.

Carrier suggests we dismiss the claim because it was not properly handled on the property. This contention is based on the proposition that the claim here made is not the same as the one handled on the property. Apparently a different reason was given on the property as a basis for its allowance than the one presented here, but the claim is the same. As long as the claim itself remains the same we can see no justification for dismissing it.

In view of what we have said we think the claim should be allowed.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 19th day of December, 1956.

DISSENT OF CARRIER MEMBERS

TO AWARDS 2378, 2379, 2380, 2381, 2382, 2383

The claimants were not required to work Thanksgiving Day, November 25, 1954, a holiday requiring time and one-half pay when worked. They each were paid one day at straight time under the National Agreement of August 21, 1954. No other employes were used on claimants' alleged holiday assignments. No provision of the Agreement requires the carrier to work regularly assigned employes on holidays when their services are not needed. The claim should have been denied under the authority of our Awards 1606, 2070, 2097, 2169, 2212, 2325 and 2358.

In order to give the claimants two and one-half days pay because they were not required to work on the holiday in question, the majority relies on what they term is a "verbal agreement" allegedly made by the Carrier some time in 1950 that "forces used on holidays would not be reduced below the number worked on Sundays." There is no such "verbal agreement."

The record shows that at a conference concerning the application of the 40-hour week Agreement the Carrier's General Superintendent of Motive Power stated he **thought** as many employes generally could be used on holidays as on Sundays and he would **try to do so.** Obviously, such a statement is not an agreement, "verbal" or otherwise. It was simply an expression of intention to give some work to some employes; it was indefinite; it was not reduced to writing. It had none of the requisites of an agreement and was neither accepted by the employes nor offered by the carrier as such. All of the arguments that such expression of intention constituted a "verbal agreement" were considered and rejected by this Division in Award 2097 involving the same parties in an identical dispute. After thorough consideration, the Division found there was no merit in that contention and denied the claims. Nothing has been shown which justifies a reversal of that award.

For these reasons, we dissent.

J. A. Anderson
E. H. Fitcher
R. P. Johnson
D. H. Hicks
M. E. Somerlott