Award No. 2380
Docket No. 2075
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.-C. I. O. (Carmen)

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current Agreement Carmen Helpers (Oilers) Palumbo, Donelson, Jacobs, Wise, Plett, Ford, Keller, Port and Henthorn were improperly denied the right to work on Christmas Day, December 25, 1954 and New Year's Day, January 1, 1955.

2. That accordingly the Carrier be ordered to compensate the aforesaid employes each in the amount of 8 hours pay at the applicable rate of pay for Christmas Day, December 25, 1954, and New Year's Day, January 1, 1955.

EMPLOYES' STATEMENT OF FACTS: At the Spokane Train Yard, the carrier on Sundays, December 26, 1954 and January 2, 1955, and on Sundays prior to and subsequent to those dates, employed 2 carmen helpers on the 7:00 A. M. to 3:00 P. M. shift, 4 carmen helpers on the 3:00 P. M. to 11:00 P. M. shift, and 3 carmen helpers on the 11:00 P. M. to 7:00 A. M. shift. The claimants named above are assigned on Sunday on the various shifts as a regular assigned work day. Each of the claimants is assigned Saturday as a regular work day. On Saturday, December 25, 1954, and Saturday, January 1, 1955, the claimants did not work, nor were any carmen helpers assigned to work on these shifts.

The dispute was handled with carrier officials designated to handle such affairs who all declined to adjust this dispute.

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 2 carmen helpers on the 7:00 A. M. to 3:00 P. M. shift, 4 carmen helpers on the 3:00 P. M. to 11:00 P. M. shift, and 3 carmen helpers on the 11:00 P. M. to 7:00 A. M. shift on Sunday, which means that they, under Rule 11 (b)-C, captioned and reading as follows:

the present operation it might easily lead to some employes being paid 52 hours for a week's work while others in the same week were paid for only 32 hours."

In the third paragraph it will be noted that we directed attention to our feeling that a more equitable method of handling could be arrived at by permitting the senior employes in each shift, in the spread of whose assignment the holiday would fall, to work such holiday when service thereon was necessary and requested that further consideration be given to this particular matter at the next meeting of the System Federation.

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 Carman Helpers (Oilers) Palumbo, Donelson, Jacobs, Wise, Plett, Ford, Keller, Port and Henthorn were all improperly denied the right to work on Saturday, Christmas Day, December 25, 1954 and on Saturday, New Year's Day, January 1, 1955. 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 for each of said days. Saturday was a workday of each claimant's regularly assigned work week and they were assigned to and engaged in performing services that carrier found it was necessary to have performed on seven (7) days each week.

The facts are that at its Spokane Train Yard carrier, on the Sundays immediately prior and subsequent to both Christmas and New Year's Day, employed two (2) carmen helpers on the first shift, four (4) carmen helpers on the second shift and three (3) carmen helpers on the third shift whereas, on both Christmas and New Year's Day it employed none. Carrier paid each of the claimants for eight (8) hours at the applicable straight time rate for both Christmas and New Year's Day as Section 1 of Article II of the August 21, 1954 agreement provides it shall under the situation here presented.

It is contended that carrier, by reducing its forces on Christmas and New Year's Day below that employed on Sundays immediately preceding and subsequent thereto, violated an agreement entered into by it with these employes in 1950 and which agreement the employes claim is still in full force and effect.

This docket presents the same question raised in Docket 2013 and answered by our Award 2378 based thereon. Since both dockets involve the same carrier, organization and agreement, what was said and held therein is here controlling. In view thereof we find 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 claims 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