Award No. 2450
Docket No. 2147
2-IC-CM-'57

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 99, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Carmen)

ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

(1) That under the current agreement Carman G. C. Powell, was improperly compensated at the straight time rate for service performed on May 3 and May 16, 1953.

(2) That accordingly the Carrier be ordered to compensate the aforesaid Carman additionally in the amount of four (4) hours' pay at the straight time rate for each of the above dates.

EMPLOYES' STATEMENT OF FACTS: Carman G. C. Powell, hereinafter referred to as the claimant, regularly assigned on the repair track, Fulton, Kentucky from 7 A. M. to 3:30 P. M., was instructed by his foreman to report for work Sunday, May 3, 1953, on the 11 P. M. to 7 A. M. shift, to fill in for Car Inspector J. R. Davis, while he was off on his annual earned vacation. The claimant returned to his regular assigned position on the 7 A. M. to 3:30 P. M. shift on Saturday, May 16, 1953.

The carrier has declined to adjust this dispute on a basis satisfactory to the employes.

The agreement effective April 1, 1935, as subsequently amended is controlling.

POSITION OF EMPLOYES: It is submitted that when the claimant changed from working his regular assigned hours of 7 A. M. to 3:30 P. M., to the shift hours of 11 P. M. to 7 A. M. on Sunday, May 3, 1953, in compliance with instructions of his foreman, he was entitled to be compensated for the hours 11 P. M. to 7 A. M. on Sunday, May 3, 1953, under the clear and unambiguous provisions of Rule 14, which in pertinent part reads as follows:

> "Employes changed from one shift to another will be paid overtime rate for the first shift of each change. Employes working two shifts or more on a new shift shall be considered transferred . . ."

which the Board declared was in conflict with it. The Board failed in Awards 1806 and 1807 to apply a second recognized rule for the construction of contracts, which is succinctly stated as follows in 12 Am. Jur., Contracts, § 249:

> "Interpretation by Parties.—In the determination of the meaning of an indefinite or ambiguous contract, the interpretation placed upon the contract by the parties themselves is to be considered by the court and is entitled to great, if not controlling, influence in ascertaining their understanding of its terms. In fact the courts will generally follow such practical interpretation of a doubtful contract. It is to be assumed that parties to a contract know best what was meant by its terms and are the least likely to be mistaken as to its intention; that each party is alert to protect his own interests and to insist on his rights; and that whatever is done by the parties during the period of the performance of the contract is done under its terms as they understood and intended it should be. Parties are far less likely to have been mistaken as to the meaning of their contract during the period when they are in harmony and practical interpretation reflects that meaning than when subsequent differences have impelled them to resort to law and one of them then seeks an interpretation at variance with their practical interpretation of its provisions. . . ."

It is clear that the mutual construction given by the parties to the whole agreement, including the Vacation Agreement, over a period of almost twelve years should have been accepted by the Board as evidence of the proper interpretation of the agreement. The findings of the Board in Awards 1806 and 1807 were fundamentally wrong and should not be followed as a precedent.

There is no basis for the claim in this dispute, and it 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 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.

Disposition of this claim is governed by our Award No. 2440 (Docket No. 1996).

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of June, 1957.

DISSENT OF LABOR MEMBERS TO AWARDS NOS. 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2504.

We are constrained to dissent from the majority findings in the above-enumerated awards for the reasons set forth in our dissents to Awards Nos. 2083, 2084, 2197, 2205, 2250, and 2243.

It is our considered opinion that Awards Nos. 1514, 1806, and 1807 of the Second Division should have been followed and the overtime rates embodied in the schedule agreements should have been applied.

R. W. Blake
Charles E. Goodlin
T. E. Losey
Edward W. Wiesner
James B. Zink