Award No. 2457
Docket No. 2184
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 the following carmen were improperly compensated at the straight time rate for service performed on the dates as shown opposite their names:

Fred Jenkins	—May 2, May 14, 1953 July 20, 1953 August 3, August 4, August 13, 1953 March 4, March 16, 1954 May 1, May 17, 1954 June 18, 1954 August 16, August 27, August 31, 1954
Hoyt King (Deceased)	—May 18, 1953 June 1, 1953
A. Gugliemo	—June 1, June 13, June 29, 1953 July 11, 1953 August 3, 1953 June 4, June 18, 1954 August 2, August 28, 1954 October 25, 1954 November 13, 1954
J. Kamedula	—March 15, March 27, 1954 September 9, September 21, 1954 October 25, October 28, 1954 November 1, November 9, 1954
M. F. Connor	—April 6, April 19, 1954
Ira White	—September 3, September 21, 1954 November 12, 1954 December 1, December 5, December 9, 1954

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

For the above reasons, we dissent.

T. F. Purcell
M. E. Somerlott
D. H. Hicks
J. A. Anderson
R. P. Johnson"

In the findings in Award 1806, the Board, with Referee Carter, said: "That there is a conflict between the schedule agreement and the vacation agreement is self evident." Having determined that a conflict existed, rendering the contract ambiguous to the extent of the conflict, the Board should have proceeded to resolve the conflict in accordance with the recognized principles for the construction of contracts. Carrier has pointed out in this submission that one of the accepted principles in the construction of contracts is that a special provision of a contract, such as the Vacation Agreement in this case, takes precedence over a general provision, such as the changing shifts rule. Had that principle been applied, the Board would have reached a different conclusion in Awards 1806 and 1807.

The carrier members in their dissent to Awards 1806 and 1807 commented on the awards' holding that practice will not change an unambiguous rule. The referee in effect held that the changing shifts rule was plain and unambiguous and could not be altered by practice. Completely ignored was the fact that Referee Morse's binding interpretation was likewise completely plain and unambiguous and, if the Board was to perform properly its duty to interpret agreements, had to be harmonized with the changing shift rule, 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 indefifinite 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 this 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