Award No. 2641
Docket No. 2383
2-NYNH&H-CM-'57

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee J. Glenn Donaldson when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 17, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Carmen)

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That The New York, New Haven and Hartford Railroad Company improperly dispensed with the services of certain carmen employes on legal holidays involved in their regular weekly assignments of 5 days in 7-day positions and thereby damaged said employes in conflict with the current agreement.

2. That accordingly the New York, New Haven and Hartford Railroad Company be ordered to:

a) Reimburse Car Inspector H. Buote at the Boston, Massachusetts South Station Terminal in the amount of 8 hours on Thursday (Thanksgiving), November 25, 1954 at the time and one-half rate.

b) Reimburse Carman Leader P. Kelly at the Boston, Massachusetts South Passenger Yards in the amount of 8 hours on Saturday (Christmas), December 25, 1954 at the time and one-half rate.

c) Reimburse Car Inspector C. Roberts at the Worcester, Massachusetts Car Department in the amount of 8 hours on Saturday (New Year's Day), January 1, 1955, at the time and one-half rate.

d) Reimburse other carmen whose names are on file with the carrier involving the same principles as above.

In conformity with this treatment all earlier relief rules were excluded in the preparation and execution of the 1949 Agreement. It follows that prior rules and practices are no longer in effect on this property.

The report of the Emergency Board also shows that the staggered work week was intended as one method of covering work on the sixth and seventh day after reducing all assignments to a five-day basis. In its Interpretation of February 27, 1949, the Board said, referring to six- and seven-day 'positions,' 'The tenor and substance of the board's discussions and recommendations show definitely that the board intended to permit Carriers to stagger work weeks.' In its Award 1566, the Second Division has recently reaffirmed the propriety of staggering work weeks on assignments having duties required to be performed six or seven days a week or both.

The claims must be declined.

Yours truly,

/s/ E. B. Perry"

In other words it was contended it was necessary the same number of jobs be worked at a seven-day point every day of the week except Saturday and Sunday. The denial decision was not appealed further.

These conclusions find ample support in decisions of this division. See for example Award 1644, 1645, 1646, 1650.

The claim should be denied in every particular.

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.

The Division of the Adjustment Board has jurisdiction over the dispute involved herein.

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

Claimants' five (5) day assignments on seven (7) day positions included one of three holidays during the period November 25, 1954-January 1, 1955. On these holidays the number of carmen assignments was reduced and each claimant contends he lost one day's time at punitive rate because of carrier's arbitrary instruction not to work the particular holiday occurring in his regularly assigned work week.

The organization relies upon Rule 1(a), General, providing in part as follows:

"The carrier will establish * * * a work week of forty hours, consisting of five days of eight hours each, * * *."

Rule 3, reading, in part:

"Work performed on the following legal holidays, * * * shall be paid for at the rate of time and one-half.", and

Rule 5 providing, in part:

"Employes regularly assigned to work on rest days or holidays or those called to take the place of such employes, will be allowed to complete the balance of the day unless released at their own request. * * *."

The comments we have directed to similar rules and identical contentions appearing in Award No. 2640 adopted this date, apply herein. As there, we find no rule violation.

The organization further alleges the violation of a letter agreement dated June 11, 1951. This is a carmen case. The said letter is addressed to the electrical workers. The carrier answers that this agreement has never been applied to crafts, other than electrical workers, in System Federation No. 17 at their specific request. The contention was not pressed further by the organization.

This submission is on all fours with that subject of Award No. 2640 decided this date. Accordingly the findings appearing therein shall stand as the findings in this dispute upon the issue presented.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 24th day of October, 1957.

DISSENT OF LABOR MEMBERS TO AWARDS 2640 and 2641

The majority contends that the rules of the schedule agreement afford no guarantee of work on holidays and cite Award No. 1606. It will be noted from our dissent to that Award that we considered it erroneous.

It is apparent from the instant record that in bulletining the claimant's assignments the carrier specified the days of their weekly assignments and made no exception thereto in the event of a holiday falling within their regular bulletined assignments. It is presumed that the parties understood the import of the agreement and if the carrier intended that the employes would not be worked on holidays the rules should have been written with such exception stated therein. No exception was made and the assignments were bulletined in accordance with the rules of the schedule agreement; therefore to permit the carrier to unilaterally change the assignments because

of a holiday is simply allowing the carrier to evade its obligation to work the claimants on their regular assignments.

We do not agree with the findings of the majority that the Division was justified in raising estoppel in Award 2358. There the majority asserted that the claimants were estopped from asserting a different position than that presented to Emergency Board No. 106. First of all, the subject matter here was not the subject matter presented to the Emergency Board. Furthermore, the view presented by the instant majority, as well as the view set forth in the findings in Award 2325, ignores the controlling schedule agreement and the established rule, founded on good reason, that a written agreement will not be permitted to be changed or modified by any oral statements or arguments made by the parties in connection with the negotiation of the agreement. Any other rule would destroy the benefits of a written agreement.

The August 21, 1954 agreement provides for holiday pay, it does not deal with the right of employes to work Holidays. The schedule agreement governs the right of employes to work Holidays. (See Second Division Awards 2282 and 2378 to 2383, inclusive.)

R. W. Blake

C. E. Goodlin

T. E. Losey

Edward W. Wiesner

James B. Zink