

Award No. 3026

Docket No. 2838

2-GN-CM-'58

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Thomas A. Burke when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 101, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Carmen Harvey Erickson, Arthur Shaffer, Donald Vanderberg and Daniel Whalen and Carman Helper Fred Winters were improperly denied right to work May 30, 1957. Further, that Carmen Clarence Johnson and George Turbak were improperly denied the right to complete the shift after working five hours, May 30, 1957.

2. That accordingly the Carrier be ordered to compensate the aforesaid employes each in the amount of eight (8) hours pay at the applicable time and one-half rate for May 30, 1957, except claimants Johnson and Turbak, these two claimants to be compensated for three (3) hours pay each at applicable overtime rate for May 30, 1957.

EMPLOYEES' STATEMENT OF FACTS: At Havre Repair Track and Paint Shop at Havre, Montana, the carrier on Sundays prior to and after May 30, 1957, employed eight (8) carmen and one (1) helper on the first shift, the only one worked at these locations.

On May 30, 1957, the carrier reduced the force to no (0) carmen and no (0) helpers.

The claimants were not permitted to work on the date in question, with the exception of Johnson and Turbak who were called in for 5 hours work.

The dispute was 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.

"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 September 6, 1954."

In Award No. 2471, Second Division of the NRAB, with Referee Schedler, it was stated in the Findings:

"This case is identical with Award No. 2070 (Docket No. 1961) wherein the claim was denied, except in the instant case the classification of workers is different. We find nothing in the record in this case which would justify a different award.

AWARD

"Claim denied."

Since this instant claim of the Carmen of this property involves a dispute identical to those contained in Second Division Awards Nos. 2070, 2097 and 2471 and in which Awards the claims of the employes were denied, your Board must also find the instant claim of no merit whatsoever and render a denial decision consistent with the decisions of the afore-mentioned Second Division denial awards.

CONCLUSION

In effect, the employes herein are attempting through the medium of your Board to amend the guarantee rule of their agreement by having you hold that a purely oral statement is a new guarantee rule in the agreement, contrary to the provisions of the one now contained. That is beyond the power of this tribunal. The present rules make no requirement relative to any number of employes to be worked on holidays; nor do they specify any restrictions on management as to the number of employes who may or may not be worked on such holidays. Such restrictions cannot be added to the schedule by Board dictate.

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.

This docket presents the same questions as were raised in Docket No. 2773 and was answered by our Award No. 3023. In view of what was said there, this claim should be denied.

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 December, 1958.

**DISSENT OF LABOR MEMBERS TO AWARDS NOS. 3023 TO 3039,
INCLUSIVE**

The premise that the understanding of 1950 is an "at will" contract terminable by either party with or without reason is fallacious. Ignored or overlooked is the fact that the understanding was reached when, in accordance with Sec. 2 Second of the Railway Labor Act, the matter was decided in conference between the representatives of the carrier and the representatives of the employes. The understanding acquired added force from the fact that for four years it was honored as an agreement and the fact that it was so recognized and described in the carrier's letters of October 11 and October 19, 1954 seeking to terminate the agreement. Clearly the understanding relates to a working condition and the only way in which it could validly be changed or modified is in accordance with the "General Duties" of the Railway Labor Act.

The same question between the same parties was considered by this Board in Awards Nos. 2378 to 2383, inclusive, and in each instance the claim was sustained. There is nothing present in this case to justify the instant denial award.

/s/ James B. Zink

/s/ R. W. Blake

/s/ Charles E. Goodlin

/s/ T. E. Losey

/s/ Edward W. Wiesner