Award No. 3043
Docket No. 2424
2-GN-CM-'58

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. 101, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Carmen)

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement Car Inspectors Ole J. Holland, Vernon Bingham, Miles S. Neisinger and Carmen Helpers (Oilers) Billie F. Cowan, Leonard Devier and Roy Osborne, were improperly denied the right to work July 4, 1955;

2. That accordingly the Carrier be ordered to compensate the aforesaid employees each in the amount of eight (8) hours' pay at the applicable time and one-half rate for the Fourth of July, 1955.

EMPLOYES' STATEMENT OF FACTS: At the Everett Train Yard at Everett, Washington, the carrier on Sundays prior to and after July 4, 1955, employed two (2) inspectors and one (1) helper on the first shift, two (2) inspectors and no helpers on the second shift and two (2) inspectors and one (1) helper on the third shift.

On July 4, 1955, the carrier reduced the force to one (1) inspector on the first shift and one (1) inspector on the second shift, and two (2) inspectors on the third shift.

The claimants were not permitted to work on the dates in question.

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.

POSITION OF EMPLOYES: It is submitted that the facts show that the carrier employed two inspectors and one helper on the first shift and two

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.

We have consistently held that in the absence of an agreement rule requiring the carrier to work employes on a holiday, it is not required to do so. We applied that rule and denied a claim processed by this organization against this carrier in our Award No. 2097.

Then in our Awards No. 2378 to 2383 we sustained similar claims against this carrier on the basis of a verbal understanding that forces would not be reduced on holidays below that worked on Sundays. Later in our Award No. 2471 we reverted to the holding in Award No. 2097.

It appears that the verbal understanding referred to arose out of discussions in 1950 as to the application of the 40 hour week agreement, wherein the General Superintendent of Motive Power said he would issue instructions to work the same number of employes on holidays as on Sundays and did so.

When the National Agreement of August 21, 1954 was made providing pay for holidays not worked, the carrier took the position that the reason for the prior concession automatically disappeared and notified the organization that it would no longer recognize or honor such verbal understanding.

It reasonably appears that if the parties had intended the 1950 arrangement to be contractually binding, they would at least have reduced it to writing. Certainly such an informal arrangement was subject to change or cancellation when a later contract substantially modified the holiday pay rules. Such a cancellation here appears to be justified because the verbal arrangement surely was intended to stabilize earnings in holiday weeks and that purpose is now accomplished by the holiday pay agreement. Thus we find that our Awards No. 2378 to 2383 were erroneous.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 8th day of December, 1958.

DISSENT OF LABOR MEMBERS TO AWARDS 3043 TO 3060, INCLUSIVE

The majority states that similar claims against this carrier were sustained on the basis of a verbal understanding that forces would not be reduced on holidays below that worked on Sundays. There is no basis for denying the instant claims on the theory that the verbal understanding between this carrier and System Federation No. 101 was cancelled by the National Agreement of August 21, 1954. In Award 2378 this theory was carefully examined by the referee, former Chairman of the Emergency Board, and it was found that there was no language in the report of Emergency Board No. 106, on which the agreement of August 21, 1954 is premised, or in the agreement itself which would have the effect of setting aside the parties' verbal understanding of 1950 relating to the extent to which carrier will work its forces on a workday of their regularly assigned work week.

Since it was held in Award No. 2378 that it was not the intention of the Emergency Board, nor of the parties signatory to the August 21, 1954 agreement, to abrogate such agreements, "Rather . . . it was intended to keep them in full force and effect," it can readily be seen that there is no basis for the present inconsistent holding. It is evident that Awards 2378 to 2383, inclusive, were correct and should have been adherred to in Awards 3043 to 3060, inclusive.

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