

**Award No. 3432**

**Docket No. 3212**

**2-GN-EW-'60**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Francis B. Murphy when award was rendered.

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 101, RAILWAY EMPLOYEES'  
DEPARTMENT, A. F. of L.—C. I. O. (Electrical Workers)**

**GREAT NORTHERN RAILWAY COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:**

1. That under the current agreement Electrician Allen Opgaard and Electrician Helper Harry Fedash were improperly denied the right to work on Labor Day, September 2, 1957.

2. That accordingly the Carrier be ordered to compensate the aforesaid Electrician and Electrician Helper each in the amount of eight (8) hours' pay at the time and one-half rate for the aforesaid date.

**EMPLOYEES' STATEMENT OF FACTS:** At the Interbay Roundhouse on the first shift on Sundays prior to and following September 2, 1957, the carrier employed two electricians and two helpers. On September 2, 1957, the carrier assigned one electrician and one helper to work that holiday on the first shift. The above named electrician and helper, hereinafter referred to as the claimants, were available for service on that date but were not used.

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 EMPLOYEES:** It is submitted that the facts show that the carrier employed two electricians and two electrician helpers on the first shift, which means that they, under Rule 11 (b) C, captioned and reading as follows:

C. Seven-day Positions.

"1. That under the current agreement Electricians M. A. Lunceford, H. K. Olson and Electrician Helpers A. G. Adams and L. A. Schroyer were improperly denied the right to work Labor Day, September 6, 1954.

"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.

Parties to said dispute were given due notice of hearing thereon.

It is our opinion that the August 21, 1954 agreement between the organization and the carrier spells out the intention of the parties regarding

holiday pay. For this reason we must reject the contention of the claimants that a prior oral agreement makes a sound basis for payment of this claim.

### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman  
Executive Secretary

Dated at Chicago, Illinois, this 4th day of April, 1960.

### DISSENT OF LABOR MEMBERS TO AWARD NO. 3432

The majority in holding that "the August 21, 1954 agreement between the organization and the carrier spells out the intention of the parties regarding holiday pay. For this reason we must reject the contention of the claimants that a prior oral agreement makes a sound defense for payment of this claim" ignores the fact that the oral understanding relates to "working conditions" and therefore falls within the purview of Section 6 of the Railway Labor Act. There being no evidence that the understanding has been changed in accordance with the requirement of Section 6, the majority should have held that the oral understanding was binding and the carrier had no license to terminate it.

**R. W. Blake**

**C. E. Goodlin**

**T. E. Losey**

**E. W. Wiesner**

**James B. Zink**