Award No. 3726
Docket No. 3308
2-GN-CM-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson, when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 101, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.-C. I. O. (Carmen)

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreement, Carmen Charles Stultz, Jr., Frank Hennes, Roy Phelps, Leslie Berry, Neil Leigh, Marshall Gootch, Charles Schumacher, Alfred Priess, Bert Ryberg, Jerald Rasmussen, Morris Johnson, Mark Collins, and Donald Lund and Carmen Helpers Sander Johnson and Ruben Hustad were improperly denied the right to work February 22, 1958.

2. That accordingly the Carrier be ordered to compensate the aforesaid employes in the amount of 8 hours pay at the applicable time and one-half rate for February 22, 1958, when they were denied the right to work.

EMPLOYES' STATEMEST OF FACTS: At Minot, North Dakota, the carrier on Sundays prior to and after February 22, 1958 employed seventeen (17) carmen and two (2) carmen helpers on its repair track.

On February 22, 1958 the carrier reduced the force to four carmen and no carmen helpers.

The claimants were not permitted to work on February 22, 1958.

The dispute was handled with carrier officials designated to handle such affairs, all of whom 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 seventeen carmen and two carmen helpers on its repair track on Sundays, which means that they, under Rule 11(b) C, reading:

> "On positions which are filled seven days per week any two consecutive days may be rest days with the presumption in favor of Saturday and Sunday"

established that number of seven day positions.

Then in our Awards Nos. 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 Forty Hour Week Agreement, wherein the General Superintendent of Motor 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 by 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 arrangements 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 Nos. 2378 to 2383 were erroneous."

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, 2471, 3023 through and including 3039, and 3043 through and including 3060** 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.

Prior awards are not in agreement whether an oral understanding or intention expressed by the Carrier in 1950, that forces on holidays would not be reduced below the number worked on Sundays, became a part of the Agreement between the Carrier and the Organization.

The Carrier's position is that it did not, but was merely a gratuitous action taken to maintain take-home pay for the employes involved, and that in any event it was superseded by the Agreement of August 21, 1954, which effected the same result even more generally by providing pay for holidays not worked.

Assuming without deciding that the 1950 oral statement constituted a binding agreement, the applicable Agreements must be construed together to give effect to the parties' intention. The oral understanding was not to deprive employes of holidays by making them work unnecessarily; it was obviously to preserve their take-home pay in spite of holidays. The same result was effected in still greater degree for them and many others, by Article II, Section 1 of the August 21, 1954 Agreement, which gave them holiday pay without requiring them to work. Thus if the first was contractual the purpose of both was the same, so far as these Claimants are concerned.

Although Awards 2378 to 2383 (Referee Wenke) would sustain the claim, the great weight of authority goes to the contrary, as evidenced by Awards 2097 (Referee David R. Douglass), 2471 (Referee Carl R. Schedler), 3023 to 3039 inclusive, and 3093, (Referee Thomas A. Burke), 3043 to 3060, inclusive (Referee Dudley E. Whiting), 3216, 3217 and 3218 (Referee D. Emmett Ferguson), 3408 (Referee James P. Carey, Jr.) and 3432 (Referee Francis B. Murphy), involving the same Carrier, Organization, circumstances and Rules

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois this 6th day of April 1961.

DISSENT OF LABOR MEMBERS TO AWARDS 3726 to 3729, inclusive

We consider as erroneous the awards accepted by the majority as authority for denying this claim. Under the circumstances we consider it unnecessary to do other than incorporate herein by reference our dissents to the awards cited by the majority as giving the weight of authority for denying the instant claim.

Edward W. Wiesner

R. W. Blake

Charles E. Goodlin

T. E. Losey

James B. Zink