Award No. 3889

Docket No. 3633

2-GN-CM-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Carroll R. Daugherty 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 Coach Cleaners Annette Motarie, Albert J. Lemire and Alice Lennon were improperly denied the right to work Thanksgiving Day, November 27, 1958.

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 Thanksgiving Day, November 27, 1958, when they were denied the right to work.

EMPLOYES' STATEMENT OF FACTS: At Great Falls Car Yard, Great Falls, Montana, the carrier on Sundays prior to and after November 27, 1958, employed no coach cleaners on the first shift, one (1) coach cleaner on the second shift, and two (2) coach cleaners on the third shift.

On November 27, 1958, the carrier employed no coach cleaners.

The claimants were not permitted to work on November 27, 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 no coach cleaners on the first shift, one (1) coach cleaner on the second shift, and two (2) coach cleaners on the third shift on Sunday, 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."

In evaluating previous awards and giving them proper weight we should measure both quantity and quality. The reasoning and experience of the author, as well as the time, place and circumstances in which the award was written, all have some bearing on its value as a guide. If it is a leading case which has been approvingly cited in a succession of other awards, that also should be noted.

After applying these considerations to the docket at hand and without admitting that we are basing our conclusions solely on previous awards we come to the merits of the claim.

It is asserted and not denied that there was an oral expression of the carrier (subsequently characterized as a verbal understanding) which was placed in effect and practiced until the agreement of August 21, 1954 became effective. Immediately thereafter, carrier notified the organization that the new National Agreement with its modification of pay obviated the reason for the old understanding and rendered it void.

We are of the opinion that the conditions of 1950 were drastically changed in 1954 and that the 1954 agreement was written in contemplation of an added benefit for the employes. We are of the further opinion that Section 5 of Article II preserved practices 'governing the payment for work **performed** on a holiday.' This does not preserve the number of employes to be worked on a holiday.

AWARD

The claim is denied."

Since this instant claim of the carmen of this property involves a dispute identical to those contained in Section Division **Awards Nos. 2070, 2097, 2471, 3023 through and including 3039, 3043 through and including 3060 and 3216 through and including 3219,** 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 aforementioned 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 of 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.

This Docket involves the same carrier, the same System Federation, and the same issue as those resulting in numerous prior Awards handed down by this Division, the most recent being No. 3726. The Division has carefully once more reviewed the contentions of the parties, the provisions of the agreements, and the prior awards; and the Division can not now find any compelling reason for departing from the great weight of authority on the issue here presented.

Accordingly, the instant case cannot be found to merit a sustaining award.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 15th day of December 1961.

DISSENT OF LABOR MEMBERS TO AWARDS 3889 AND 3890

The majority cites prior awards handed down by this Division, specifically Award 3726, involving the same carrier, the same System Federation, and the same issue as reason for finding that the instant case cannot be found to merit a sustaining award.

We wish to point out that in Awards 2378 through 2382, inclusive, involving the same carrier, the same System Federation and the same issue the cases were found to merit sustaining awards. These held that the oral agreement was violated. In view of these awards and in view of the fact that a dissent was filed on each of the awards referred to by the majority pointing out the erroneousness, the statement by the majority that "The Division has carefully once more reviewed the contentions of the parties, the provisions of the agreements, and the prior awards . . ." can hardly be considered accurate. The irony of it is that the majority knew about but ignored the awards which definitely supported the employes.

As pointed out in the dissent to Award 3408, incorporated by reference in dissent to Award 3726, there being no evidence that the oral agreement, which also governs here, had been changed in accordance with the requirement of Section 6, it is crystal clear that the majority should have held that the oral agreement was binding and that the carrier had no license to termi-

nate it. The present award is erroneous in that it assumes that the parties performed a useless act in making the oral agreement. The oral agreement dictated a sustaining award.

/s/ **Edward W. Wiesner**
Edward W. Wiesner

/s/ **C. E. Bagwell**
C. E. Bagwell

/s/ **T. E. Losey**
T. E. Losey

/s/ **E. J. McDermott**
E. J. McDermott

/s/ **James B. Zink**
James B. Zink