

The Second Division consisted of the regular members and in addition Referee Irwin M. Lieberman when award was rendered.

Parties to Dispute: (System Federation No. 109, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Consolidated Rail Corporation

Dispute: Claim of Employees:

- (a) That the Carrier violated the controlling agreement when they unilaterally changed the observation of Veteran's Day from October 27, 1975 to November 11, 1975.
- (b) That accordingly, the Carrier be ordered to compensate all Carmen Craft employees listed as Claimants in Employee's Exhibits E, E-2, H and H-2, for eight (8) hours each at the punitive rate for services performed on October 27, 1975, and/or eight (8) hours each at the pro rata rate while on rest day or assigned vacation.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 waived right of appearance at hearing thereon.

The dispute herein relates to the day chosen to celebrate Veteran's Day, a holiday under the applicable Agreement. Under Federal Law, effective January 1, 1971, Veteran's Day was to be observed as a national holiday on the fourth Monday in October. On April 5, 1973, the State of Pennsylvania changed the date for the observance of Veteran's Day back to the original date of November 11. The Agreement between the parties did not specify the date for the observance of the holiday.

By Letter Agreement dated October 3, 1973 the parties agreed that Veteran's Day would be celebrated on the fourth Monday in October, as provided by the Federal Law, in spite of the new State Statute. The holiday was celebrated in accordance with the Letter Agreement in 1973 and 1974.

In 1975 Petitioner's official asked Carrier on several occasions about the celebration of Veteran's Day and was repeatedly told that Carrier would continue with the October date. On October 21, 1975, after Carrier had determined that a majority of other eastern Carriers were observing the holiday on November 11th, Carrier notified the General Chairman that November 11 would be the day for the holiday rather than the fourth Monday in October. This action triggered the Claim herein.

The Organization argues that the Letter Agreement of October, 1973 was binding and that Carrier had no right to abrogate that understanding unilaterally. Further, the Organization states that there was no question of State Law since Carrier had celebrated the holiday for two years in accordance with the Agreement and contrary to the law. In short, Petitioner contends that the parties were bound by the Agreement made and were obliged to conform to that Agreement unless changed by negotiations.

Carrier's principle argument is that the Letter Agreement was in conflict with the law, and the law is controlling. Further, it is urged that all the employees involved received their appropriate holiday pay (for the date it was celebrated) and were not harmed. Carrier argues that to sustain the Claim would result in unjust enrichment for the employees involved. It is argued that the Agreement makes no provision for penalty payments for alleged violations such as that in this dispute.

It is apparent that the Organization was aroused and concerned by the short notice of the change of dates for celebration of this holiday. It also is clear that Carrier would have been well advised to have discussed the matter with Petitioner before issuing its decision, particularly in view of the earlier letter understanding. However, two elements are controlling in this dispute. First, the courts have held that the state laws are controlling with respect to the dates on which holidays will be observed (Consolidated Marketing, Inc. v. Busi., La. App. 1972, 256 So. 2nd 695). Secondly, a fundamental tenet of contract law mandates that contractual provisions in violation of law are void. Hence, in spite of the short notice, lack of discussion and violation of law for two years, Carrier had the right to make the change in 1975 in order to comply with the State Statute. Notwithstanding the Letter Agreement, conforming with the law was paramount. For the reasons indicated, the Claim must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 21st day of February, 1979.

LABOR MEMBER'S DISSENT TO AWARDS NO. 7849 & 7850
DOCKET NOS. 7560 & 7561

The Majority is in error by stating that the General Chairman was notified on October 21, 1975 that Carrier would observe Veteran's Day on November 11, 1975. The General Chairman of another craft was given such notice.

The Majority recognizes that Veteran's Day was observed on the day observed nationally by letter Agreement. Carrier changed that date without negotiation and the Majority upholds changing the Agreement on the presumption that the Holiday must be observed on the day recognized by the State.

The Majority has gone far afield to reach such conclusion. The parties have the right under the Railway Labor Act to reach Agreement observing any Holiday on any day they so choose. The parties must abide by the bargain made until changed by Agreement. The Majority failed to recognize that many employees under contract and without a contract do not observe Veteran's Day as a Holiday. By the Findings in these Awards, those employees and their employers are in violation of State law. Such presumption is ill advised.

We must dissent to such Findings.


C. E. Wheeler
Labor Member