Award No. 1620
Docket No. 1527
2-PULL-EW-'53

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. 122, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Electrical Workers)

THE PULLMAN COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreement the Carrier on January 16, 1951 improperly promoted Electrician O. T. Koska who was in seniority position No. 4 on the 1951 Electrical seniority roster.

2. That accordingly the Carrier be ordered to:

(a) Promote Electrician W. N. Graham who is a senior qualified electrician to O. T. Koska.

(b) Compensate Electrician W. N. Graham the difference in pay from what he did earn as an electrician and what he could have earned as a supervisor, retroactive to January 16, 1951.

(c) Give Electrician W. N. Graham a seniority date as a supervisor as of January 16, 1951.

EMPLOYES' STATEMENT OF FACTS: Electrician W. N. Graham, hereinafter referred to as the claimant, was in seniority position No. 1 and Electrician O. T. Koska was in seniority position No. 4 on the 1951 electricians' seniority roster of the Houston District, a copy of which is submitted herewith and identified as Exhibit A.

The carrier on January 16, 1951 promoted Electrician O. T. Koska to a supervisory position.

The agreement effective July 1, 1948, as subsequently amended, is controlling.

POSITION OF EMPLOYES: It is submitted that the action of the carrier in the instant dispute is contrary to the provisions of the current agreement as the claimant was the senior electrician, qualified for a supervisory posi-

has no authority to read into a contract that which its makers have not put there expressly, or by clear implication. The Board has said so many times. As noted in Award No. 5288, page 3 (1st Division, Hon. Edward F. Carter, Referee), the Board has no power to rewrite the contract or to relegate to itself the powers and duties of the parties. And in Award No. 5396, page 8, (1st Division, Hon. Robert G. Simmons, Referee): 'In the absence of rules clearly establishing the right it will not be held that the carriers and employes contracted to pay and to be paid two days' pay for one day's work. In the instant case, the established practice followed, without objection, by both carriers and employes over a long period of time supports the position taken by the carrier in the construction of the cited rules.' Of course, repeated breaches do not abrogate a clearly expressed contract provision, but where the contract is silent, or the meaning of a provision is not clear, the long-continued practice of the parties is most persuasive proof that the practice was within the purview of the contract, and the intention of the parties. Such practical construction of a contract should not be brushed aside by any tribunal. This tribunal may only determine the question of where the parties have placed themselves by their own agreement."

The Company submits that the instant claim for the reasons above stated should 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.

Effective January 16, 1951, electrician O. T. Koska, Number 4 on the Electricians' seniority roster of the carrier's Houston District at that time, was promoted to the position of assistant foreman in that District.

The organization's claim is in behalf of electrician W. N. Graham, who stood Number 1 on the above-mentioned roster on the above-mentioned date.

Applying to the facts of the instant case the principles and reasoning set forth in our Award No. 1600, we find here no violation of the parties' agreement by the carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 7th day of January, 1953.