Award No. 1807
Docket No. 1699
2-IC-CM-'54

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Edward F. Carter when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 99, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Carmen)

ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: (1) That under the current agreement Carman M. F. Connor was improperly compensated at the straight time rate for service performed on April 14th and 21st, 1953.

(2) That accordingly the Carrier be ordered to compensate the aforesaid Carman additionally in the amount of four (4) hours' pay at the straight time rate for each of the above dates.

EMPLOYES' STATEMENT OF FACTS: Carman M. F. Connor, hereinafter referred to as the claimant, regularly assigned on the repair track, South Water Street, Chicago, Illinois from 8:00 A. M. to 12:00 Noon, and 12:30 P. M. to 4:30 P. M., Monday through Friday, with rest days of Saturday and Sunday, was instructed on Monday, April 13, 1953 by the foreman to report for work on Tuesday, April 14 on the 3:00 P. M. to 11:00 P. M. shift to fill in for Car Inspector Joseph Kamedula while he was off on his annual earned vacation. The claimant returned to his regular assigned position on the 8:00 A. M. to 12:00 Noon and 12:30 P. M. to 4:30 P. M. shift on Tuesday, April 21, 1953.

The carrier has declined to adjust this dispute on a basis satisfactory to the employes.

The agreement effective April 1, 1935, as subsequently amended is controlling.

POSITION OF EMPLOYES: It is submitted that when the claimant changed from working his regular assigned shift hours of 8:00 A. M. to 12:00 Noon and 12:30 P. M. to 4:30 P. M. to the shift hours of 3:00 P. M. to 11:00 P. M. on Tuesday April 14, 1953, in complinance with the instructions of the foreman, he was entitled to be compensated for the hours 3:00 P. M. to 11:00 P. M. on Tuesday, April 14, under the clear and unambiguous provisions of Rule 14, which in pertinent part reads as following:

any more conclusive example of his intent than the example he cited, which was previously quoted in this submission. Any interpretation of the System Federation agreement which fails to give effect to this clearly-expressed intent will in effect alter the contract. Carrier believes it is the Board's duty to uphold the integrity of the contract. To this end, the claim 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.

The claim in this case is controlled by the same principles announced in Award No. 1806. For the reasons therein stated, claimant is entitled to be paid pursuant to the provisions of Rule 14, current agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 12th day of July, 1954.

DISSENT OF CARRIER MEMBERS TO AWARD 1807

The sustaining awards rendered in these two cases completely ignore the evidence as presented and evidently rely on the basis of ideas formerly expressed by the author in Third Division awards on entirely different rules and under entirely different circumstances.

The award states that the carrier contends that the claim should be denied under Article 12 (a), Vacation Agreement, which provides:

> "Except as otherwise provided in this agreement a carrier shall not be required to assume greater expense because of granting a vacation than would be incurred if an employee were not granted a vacation and was paid in lieu therefor under the provision hereof. * * *"

This is not a fact. The carriers in both these dockets relied principally upon the interpretation rendered by Referee Morse November 12, 1942, which question had been submitted to him by agreement between all parties to the Vacation Agreement of December 17, 1941, with the stipulation that his decision would be final and binding, Referee Morse's interpretation is:

> "'(b) A shop craft employee on the third shift is allowed a 6 day vacation. It is necessary to fill his position and an employee is transferred from the second shift. The transferred employee **claims that schedule rules with respect to changing shifts and doubling over apply** to filling vacation vacancies and claims time and one-half for the first shift he works in filling the vacationing employee's

position, and time and one-half for the first shift he works upon return to his position. It is the carrier's position that these punitive payments are not required.'

It is the referee's opinion that the carriers' position on this illustration is absolutely sound and within the meaning and intent of the vacation agreement. It is his view that under Article 12 (b) the vacancy created by an employee going on vacation does not constitute such a vacancy as to entitle a relief worker to punitive payments. The referee submits that the employees' position on this illustration is a good example of a strained and highly technical interpretation of existing working rules. He is convinced that it was not the intent of the parties, nor it is reasonable to assume that they could have intended, that when a carrier grants an employee a vacation and his job is such that it must be filled with a relief worker, an additional cost of overtime pay must be incurred for the first shift." (Emphasis added.)

The referee goes to great length in these findings to justify the awards by relying on and quoting statements made by Referee Morse in connection with the relation of schedule rules to the vacation agreement, wherein Mr. Morse stated that in instances in which existing working rules, if strictly applied, would produce unjust results, such rules should be modified through the processes of collective bargaining negotiations, but fails to take into consideration the balance of that statement "that it was the duty of the referee to interpret and apply the vacation agreement in accordance with the meaning of its language, and if that resulted in a conflict with some **working rules about which the referee was uninformed**, then it was up to the parties to adjust the matter through the machinery for negotiations as provided for in Section 13 and 14 of the vacation agreement." (Emphasis added.)

Referee Morse was not **uninformed** as to the impact of his decision upon the changing shift rule of the Shop Crafts Agreement. On the contrary, he was fully informed as to its effect, as were the parties to the agreement who referred these matters to the referee. The impact of the interpretation was specifically argued by the organization in its argument before Mr. Morse.

Section 14 of the vacation agreement made no provision for negotiating changes in existing schedule rules. That section created a disputes committee, to which disputes, under the vacation agreement, could be referred for decision. It is significant that during the years the Section 14 committee was in existence, no such dispute was submitted to that committee, although there were hundreds of changes made in shifts to acommodate vacationing employees.

Section 13 of the vacation agreement did provide that the parties to the agreement may make changes in the working rules or enter into additional written understandings to implement the purposes of this agreement (vacation agreement), provided that such changes or understandings shall not be inconsistent with this (vacation) agreement. The changes provided for in this Section 13 were not on an over all basis, but were restricted to changes that would not be inconsistant with the vacation agreement.

The question submitted to Referee Morse involving changing shift rule was referred to him with full knowledge of both parties, one of which was the organization progressing this claim, of the effect the decision would have on schedule rules. Now after twelve years, during which both parties recognized the validity of this interpretation, we have a stranger to the agreement come along and nonchalantly state that the parties performed a vain act when they agreed to submit this question and that Referee Morse did not know what he was doing when he rendered the decision. If the employees were not satisfied with the interpretation as rendered by Referee Morse and thought that it did violence to their schedule agreement, it was incumbent upon them to institute negotiations to relieve such inequity. The carriers had