

Award No. 2379

Docket No. 2032

2-GN-CM-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Adolph E. Wenke when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 101, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L.-C. I. O. (Carmen)**

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Car Inspector Walter Brown, Ole J. Helle, Miles S. Neisinger and Carmen Helpers (Oilers) Ed N. Oman, Ernest W. Kunz and James F. Wiltze were improperly denied the right to work Thanksgiving Day, November 25, 1954.

2. That accordingly the Carrier be ordered to compensate the aforesaid employes each in the amount of 8 hours pay at the applicable time and one-half rate for November 25, 1954.

EMPLOYEES' STATEMENT OF FACTS: At the Everett Train Yard at Everett, Washington, the carrier on Sunday, November 21, 1954, and on Sundays prior to and subsequent to that date, employed 2 inspectors and one Helper on the First Shift, 2 inspectors and one helper on the Second Shift and 2 inspectors and two helpers on the Third Shift.

On Thanksgiving Day, November 25, 1954, the carrier reduced the force to one inspector on the First Shift, one inspector on the Second Shift, and one inspector on the Third Shift.

The above named car inspectors and helpers (hereinafter referred to as the claimants) are assigned to jobs of which Thursdays are a regular work day.

The claimants were not permitted to work on Thursday, November 25, 1954.

The agreement effective September 1, 1949, as subsequently amended, is controlling.

It is submitted that the facts show that the carrier employed two inspectors and one helper on the First Shift, two inspectors and one helper

In the third paragraph it will be noted that we directed attention to our feeling that a more equitable method of handling could be arrived at by permitting the senior employes in each shift, in the spread of whose assignment the holiday would fall, to work such holiday when service thereon was necessary and requested that further consideration be given to this particular matter at the next meeting of the System Federation.

Such consideration was given which later resulted in the agreement being reached designated as Memorandum No. 29 which was later revised as of February 15, 1955.

Everything, therefore, it will be noted, relative to this particular Memorandum No. 16 had to do with the distribution of overtime only and had nothing whatsoever to do with providing any guarantee for any employe or employes.

The carrier holds the employes, therefore, are attempting to stretch an agreement covering only the distribution of overtime into a guarantee rule which was at no time the intent of the carrier, and we do not believe, at the time it was issued, the intent of the employes.

Due to the above, the carrier holds that the claim must 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 organization contends Car Inspectors Walter Brown, Ole J. Helle, Miles S. Neisinger and Carmen Helpers (Oilers) Ed N. Oman, Ernest W. Kunz and James F. Wiltze were all improperly denied the right to work on Thursday, Thanksgiving Day, November 25, 1954. Because of that fact it asks that we order carrier to pay each of the claimants for eight (8) hours at time and one-half the applicable rate. Thursday was a workday of each claimant's regularly assigned work week. They were assigned to and engaged in performing services that carrier found it necessary to have performed on seven (7) days each week.

The facts are that at its Train Yard, Everett, Washington, carrier, on Sunday, November 21, 1954, and on Sundays immediately prior and subsequent thereto, employed two (2) inspectors and one (1) helper on the first shift, two (2) inspectors and one (1) helper on the second shift and two (2) inspectors and two (2) helpers on the third shift whereas, on Thursday, Thanksgiving Day, November 25, 1954, it reduced its forces at this point to one (1) inspector on the first shift, one (1) inspector on the second shift and one (1) inspector on the third shift. Carrier paid each of the claimants for eight (8) hours at the applicable straight time rate for Thanksgiving Day as Section 1 of Article II of the August 21, 1954 Agreement provides it shall.

It is contended carrier, by reducing its forces on Thanksgiving Day below that employed on Sundays immediately preceding and subsequent thereto, violated an agreement entered into with these employes in 1950, which agreement the organization claims is still in force and effect. This docket presents the same questions raised in Docket 2013 and answered in our Award 2378 based thereon. Since both dockets involve the same carrier, organization and agreement, what is said and held in Award 2378 is here controlling. In view thereof we find the claim should be allowed.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 19th day of December, 1956.

**DISSENT OF CARRIER MEMBERS TO
AWARDS 2378, 2379, 2380, 2381, 2382, 2383**

The claimants were not required to work Thanksgiving Day, November 25, 1954, a holiday requiring time and one-half pay when worked. They each were paid one day at straight time under the National Agreement of August 21, 1954. No other employes were used on claimants' alleged holiday assignments. No provision of the Agreement requires the carrier to work regularly assigned employes on holidays when their services are not needed. The claims should have been denied under the authority of our Awards 1606, 2070, 2097, 2169, 2212, 2325 and 2358.

In order to give the claimants two and one-half days pay because they were not required to work on the holiday in question, the majority relies on what they term is a "verbal agreement" allegedly made by the Carrier some time in 1950 that "forces used on holidays would not be reduced below the number worked on Sundays." There is no such "verbal agreement."

The record shows that at a conference concerning the application of the 40-Hour Week Agreement the Carrier's General Superintendent of Motive Power stated he thought as many employes generally could be used on holidays as on Sundays and he would try to do so. Obviously, such a statement is not an agreement, "verbal" or otherwise. It was simply an expression of intention to give some work to some employes; it was indefinite; it was not reduced to writing. It had none of the requisites of an agreement and was neither accepted by the employes nor offered by the carrier as such. All of the arguments that such expression of intention constituted a "verbal agreement" were considered and rejected by this Division in Award 2097 involving the same parties in an identical dispute. After thorough consideration, the Division found there was no merit in that contention and denied the claims. Nothing has been shown which justifies a reversal of that award.

For these reasons, we dissent.

J. A. Anderson
E. H. Fitcher
R. P. Johnson
D. H. Hicks
M. E. Somerlott