Award No. 2381
Docket No. 2083
2-GN-EW-'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 EMPLOYES' DEPARTMENT, A. F. of L. (Electrical Workers)

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement the following Electricians and Electrician Helpers were improperly denied the right to work on the dates following their names:

Electrician A. Opphard	November 25, 1954
Electrician Helper G. Bryner	November 25, 1954
Electrician L. Mommsen	December 25, 1954
Electrician Helper J. West	December 25, 1954
Electrician S. Andruss	January 1, 1955
Electrician Helper G. Peifer	January 1, 1955

2. That accordingly the Carrier be ordered to compensate the aforesaid Electricians and Electrician Helpers each in the amount of 8 hours pay at the time and one-half rate for the aforementioned dates.

EMPLOYES' STATEMENT OF FACTS: At the Interbay Roundhouse on the first shift on Sundays during the period involved in the claim, the carrier employed 2 electricians and 2 helpers on the first shift. On the dates included in the claim, which were Thanksgiving Day, Christmas Day and New Year's Day, the carrier assigned one electrican and one helper to work on these holidays on the first shift. The above named electricians and helpers, hereinafter referred to as the claimants, were available for service on the dates following their names, but not used.

The dispute was handled with carrier officials designated to handle such affairs who all declined to adjust the matter.

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

not so, written agreements could have no more dignity than an oral one."

In Award 5057 of the Third Division, with Referee Peter M. Kelliher participating, the Board stated:

> "It is a fundamental rule of contract construction that alleged oral understandings cannot be permitted to vary the terms of a written document."

In Award 2839 of the Third Division, with Luther W. Youngdahl participating, the Board stated:

> "The danger of permitting oral arrangements, made before or contemporaneously with the execution of written contracts, to modify or contradict the terms of the written agreement is readily apparent. If such an oral agreement could be used as a defense against Rule 21, a similar defense could also be used against every other rule in the written contract. It is obvious the contract would lose its efficacy and usefulness in the settlement of disputes if such a procedure were permitted. When parties enter into written contracts, they are presumed to evidence in writing the results of their oral discussions. It is an elementary rule of law that such written contracts cannot be modified or contradicted by contemporaneous oral agreements. Aside from the legal aspect involved, it would be very dangerous practice in labor disputes to permit oral agreements to affect the terms of a written contract. The very purpose of the writing is to bind parties to certain rules and prevent claims of other understandings."

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 on 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.

The parties to said dispute were given due notice of hearing thereon.

The organization contends Electrician A. Opphard and Electrician Helper G. Bryner were improperly denied the right to work on Thursday, Thanksgiving Day, November 25, 1954; that Electrician L. Mommsen and Electrician Helper J. West were improperly denied the right to work Saturday, Christmas Day, December 25, 1954; and the Electrician S. Andruss and Electrician Helper G. Peifer were improperly denied the right to work on Saturday, New Year's Day, January 1, 1955.

These days were workdays of the respective claimants' regularly assigned work week and they were all assigned to and engaged in the per-

formance of services that carrier found it necessary to have performed on seven (7) days each week.

The facts are that at its Interbay Roundhouse, Seattle, Washington, carrier, on the Sundays immediately preceding and subsequent to these three (3) holidays employed two (2) electricians and two (2) electrician helpers on the first shift whereas, on each of these holidays, it only employed one (1) electrician and one (1) electrician's helper.

Carrier paid each of the claimants for each of the holidays falling on a workday of their work week for eight (8) hours at the applicable straight time rate as Section 1 of Article II of the August 21, 1954 agreement provides it shall.

It is the contention carrier, by reducing its forces of electricians and electrician's helpers on these holidays below that employed on Sundays immediately preceding and subsequent thereto, violated an agreement entered into by it with these employes in 1950, and which the employes claim is still in force and effect. This docket presents questions all of which were raised in Docket 2013 and answered by our Award 2378 based thereon. Since both that and this docket involve the same carrier, organization and agreement, we find what was therein said and held as to the questions herein raised in controlling thereof. In view of that fact we find the claim here made 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