Award No. 2382
Docket No. 2169
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 EMPLOYES' DEPARTMENT, A. F. of L. (Carmen)

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement:

a) Car Inspectors Gust Fritz, George Kohut, Dave Komar, Ira Thomas and E. Houchen were improperly denied the right to work December 25, 1954;

b) Car Inspectors A. Morrison, George Kohut, Dave Komar, William Ferguson and E. Houchen were improperly denied the right to work January 1, 1955.

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 each date specified above that they were denied the right to work.

EMPLOYES' STATEMENT OF FACTS: The Great Northern Railway Company, hereinafter referred to as the carrier, at Great Falls, Montana, employs Car Inspectors Gust Fritz, A. Morrison, George Kohut, Dave Komar, Ira Thomas, William Ferguson and E. Houchen, hereinafter referred to as the claimants.

At the Great Falls, Montana, Train Yard, the carrier on Sunday, December 19 and 26, 1954, and on Sundays prior to and subsequent to these dates, employed three car inspectors on the First Shift, four car inspectors on the Second Shift and four car inspectors on the Third Shift.

On Christmas Day, December 25, 1954 and New Year's Day, January 1, 1955, the carrier reduced the force of car inspectors to two car inspectors on the First Shift, two car inspectors on the Second Shift and two car inspectors on the Third Shift.

The claimants were not permitted to work December 25, 1954 and January 1, 1955.

In other words, without the provision that these regularly assigned employes would work legal holidays when required, overtime on legal holidays would go to the overtime call list and not necessarily to the regularly assigned employes who would otherwise have worked these days.

As further evidence of the understanding of the carrier, we quote herewith in full, Mr. Anderson's letter of November 29 quoted in part in the memorandum, and direct attention to the language therein in which it is stated:

> "We cannot help but feel that the method of distributing holiday overtime as advocated by you is not a good one inasmuch as under the present operation it might easily lead to some employes being paid 52 hours for a week's work while others in the same week were paid for only 32 hours."

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 Gust Fritz, George Kohut, Dave Komar, Ira Thomas and E. Houchen were all improperly denied the right to work on Saturday, Christmas Day, December 25, 1954, and that Car Inspectors A. Morrison, George Kohut, Dave Komar, William Ferguson and E. Houchen were all improperly denied the right to work on Saturday, New Year's Day, January 1, 1955. 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 on either or both of said dates, as the claim made may indicate. Saturday was a workday of each claimant's regularly assigned work week and they were assigned to and engaged in

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

The facts are that in its Train Yard at Great Falls, Montana, carrier, on the Sundays immediately prior and subsequent to both Christmas and New Year's Day, employed three (3) car inspectors on the first shift, four (4) car inspectors on the second shift and four (4) car inspectors on the third shift whereas, on both Christmas and New Year's Day, it employed only two (2) car inspectors on the first shift, two (2) inspectors on the second shift and two (2) car inspectors on the third shift. Carrier paid each of the claimants for Christmas and New Year's Day 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 contended carrier, by reducing its forces on Christmas and New Year's Day 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 full force and effect. This docket presents the same questions raised in Docket 2013 and was answered by our Award 2378 based thereon. Since both dockets involve the same carrier, organization and agreement, what was 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