Award No. 2441
Docket No. 2078
2-WAB-MA-'57

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 13, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Machinists)

WABASH RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: (1) That under the current agreement the Carrier improperly compensated Machinist C. F. Cook at straight time hourly rate for service performed on March 16, 1955 and March 28, 1955.

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

EMPLOYES' STATEMENT OF FACTS: C. F. Cook, hereinafter referred to as the claimant, is employed by the carrier at its Montpelier, Ohio, Roundhouse with a machinist seniority date of May 9, 1954, and is regularly assigned to the 3:00 P. M.-11:00 P. M. shift as a machinist with a work week Saturday through Wednesday, rest days Thursday and Friday. The claimant was instructed, by the carrier, to report for work on March 16, 1955 on the 11:00 P. M.-7:00 A. M. shift to work the vacancy of Machinist E. Fritzinger who was off work because of annual earned vacation. The assignment of Machinist Fritzinger is 11:00 P. M.-7:00 A. M. shift Wednesday through Sunday, rest days Monday and Tuesday.

On March 28, 1955 the claimant was returned to his regular assignment on the 3:00 P. M. to 11:00 P. M. shift.

Claimant's time claims for eight (8) hours pay at time and one-half rate for change of shift on March 16, 1955 and March 28, 1955 have been declined up to and including the highest designated official.

The agreement effective June 1, 1939, as subsequently amended, is controlling.

POSITION OF EMPLOYES: It is submitted that when the claimant changed from working his regular assigned shift hours of 3:00 P.M.-11:00 P. M. to the shift hours of 11:00 P. M.-7:00 A. M., on March 16, 1955, in compliance with the instructions of the carrier, he was entitled to be compensated

ment of a uniform by the occupant of a position; which the Carrier had not previously required to procure a uniform, is a change in working conditions warranting an affirmative award. **With this we cannot agree.** If a practice were proven which had not been abrogated or modified by the collective agreement, the practice could not be unilaterally changed. But such is not the case in Award 726. **As a precedent, an award is no better than the reasoning which supports the result.** We are obliged to say that no rule or practice is shown to support Award 726, and it is quite evident that none could be shown. **Consequently, we are required to say that the affirmative award based on the facts recited in the Opinion is a complete non-sequitur.**

It is fundamental that the burden is upon the Claimant to show a violation of the collective agreement, or a practice which by mutual *acquiescence over an extended period of time, estops the parties, or* either of them, to deny its validity. In the present case, it is shown that most Patrolmen are required to wear uniforms and no objection has been made thereto over the years. The position here involved was bulletined as one requiring a uniform. No objection was made to the form of the bulletin and it was bid in by Claimant with full knowledge that a uniform was required to meet service requirements. Nowhere is it pointed out that the Carrier ever agreed to pay for them and it is shown indisputably the Carrier never has done so. There was, therefore, no practice or agreement requiring such payment. A basis for liability on the part of the Carrier, therefore, does not exist." (Emphasis added.)

The contentions of the committee should be dismissed and the claim 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.

Disposition of this claim is governed by our Award No. 2440 (Docket No. 1996).

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of June, 1957.

DISSENT OF LABOR MEMBERS TO AWARDS NOS. 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2247, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2504.

We are constrained to dissent from the majority findings in the above-enumerated awards for the reasons set forth in our dissents to Awards Nos. 2083, 2084, 2197, 2205, 2230, and 2243.

It is our considered opinion that Awards Nos. 1514, 1806, and 1807 of the Second Division should have been followed and the overtime rates embodied in the schedule agreements should have been applied.

R. W. Blake
Charles F. Goodlin
T. E. Losey
Edward W. Wiesner
James B. Zink