**Award No. 2442**
**Docket No. 2079**
**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.**

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## 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 Machinist Allen Newman was improperly compensated at straight time rate for service performed on September 13, 1954 and October 11, 1954.

(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: Allen Newman, hereinafter referred to as the claimant, is employed by the carrier at its Delray Roundhouse at Detroit, Michigan with a machinists' seniority date of August 10, 1926. The claimant's regular asignment is 7:00 A. M.—3:00 P. M., shift, Saturday thru Wednesday, rest days Thursday and Friday.

Machinist Newman had instructions from his supervisor to work the vacation vacancy of Machinist I. M. Evans, September 1, 1954 to September 12, 1954, inclusive. This asignment was the 3:00 P. M. to 11:00 P. M. shift, Wednesday through Sunday, Monday and Tuesday rest days and involved a change of shift. Newman did not present time claim for change of shift when he changed from his shift, 7:00 A. M. to 3:00 P. M., to Evans shift 3:00 P. M. to 11:00 P. M. However, when he returned to his regular shift on September 13 he did present time slip for eight (8) hours at time and one-half rate for change of shift and this claim has been declined up to and including the highest designated official.

Newman was then instructed to work the vacation vacancy of Machinist Sivak which started October 11, 1954. This assignment was the 11:00 P. M. to 7:00 A. M. shift. When Newman changed shift on October 11, 1954 he presented time card for eight (8) hours at time and one-half rate which was denied. He did not claim overtime rate for change of shift when he returned to his regular assignment.

quirement 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 this 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, 2447, 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 E. Goodlin**
**T. E. Losey**
**Edward W. Wiesner**
**James B. Zink**