Award No. 2443
Docket No. 2080
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 Machinist H. D. Elliott was improperly compensated at straight time rate for service performed on December 24, 1954.

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

EMPLOYES' STATEMENT OF FACTS: H. D. Elliott, hereinafter referred to as the claimant, is employed by the carrier at its Moberly, Missouri Diesel Shop with a machinist seniority date of June 1, 1926. The claimant's regular assignment is the first shift 8 A. M.—4 P. M., Monday through Friday with rest days Saturday and Sunday.

On Sunday, December 19, 1954, the claimant was assigned to the vacancy of Machinist E. J. Bernat who was off work because of third week earned vacation. Mr. Bernat's assignment is Sunday, Monday and Tuesday, 8 A. M.—4 P. M. shift, Wednesday and Thursday, 12 M.—8 A. M. shift, with Friday and Saturday rest days.

After working the 12 M.—8 A. M. shift of Thursday, December 23, which completed Bernat's vacation, Elliott returned to his regular assignment 8 A. M.—4 P. M., Friday, December 24, 1954, involving a change of shift.

Claimant's time claim for eight (8) hours pay at overtime rate because of change of shift on December 24, 1954 has been declined up to and including the highest designated official.

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

The Fourth Division in Award No. 740, Edward F. Carter, Referee, said:

"The Organization relies upon Award 726 to sustain the claim. We have carefully examined that award. The result there attained is not based on any rule of the agreement or practice on the property. The award completely ignores the fact that Patrolmen on that Carrier had, when required, provided themselves with uniforms at their own expense over the years. The award assumes that the requirement 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 obligated 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, 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