**Award No. 2446**
**Docket No. 2138**
**2-SP(T&NO)-BM-'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. 162, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Boilermakers)**

**SOUTHERN PACIFIC LINES IN TEXAS AND LOUISIANA (Texas and New Orleans Railroad Company)**

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement Boilermaker H. F. Kowalski was improperly compensated at the straight time rate for service performed on November 19 and 23, 1954.

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

EMPLOYES' STATEMENT OF FACTS: H. F. Kowalski, hereinafter referred to as the claimant, is employed by the carrier at its shops and roundhouse in Houston, Texas, with boilermaker seniority date of March 19, 1948, and was regularly assigned to the 8:00 A. M. to 12:00 Noon; 12:30 P. M. to 4:30 P. M. shift, with a work week of Monday through Friday and with assigned rest days of Saturday and Sunday, in the Houston shops.

On Thursday, November 18, 1954, the claimant was instructed by the carrier to report for work in the roundhouse on Friday, November 19, 1954, on the 4:00 P. M. to 12:00 Midnite shift to fill in the boilermaker inspectors position while Boilermaker H. J. Butler was off on his vacation, and to return to his regular assignment Tuesday, November 23, 1954.

The carrier officials, from the bottom to the top, have declined to adjust this dispute.

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

POSITION OF EMPLOYES: It is submitted to be the employes' understanding of the aforementioned controlling agreement that the claimant was changed from working on the 8:00 A. M. to 12:00 Noon; 12:30 P. M. to 4:30 P. M. shift, ending Thursday, November 18, 1954, to working another

1. The claim is predicated on a situation of one employe having been granted a paid vacation and of another employe, claimant herein, having worked the resulting vacation assignment pursuant to provisions of the Vacation Agreement and, therefore, that agreement, being complete in its coverage of the subject of vacations and filling of vacation assignments, is controlling. The Vacation Agreement provided no penalty overtime when a vacation assignment is filled but to the contrary expressly negates the intention that any penalty will be assessed. Accordingly, the claim is contrary to the letter and intent of the Vacation Agreement and without merit.

2. The agreement provision allegedly relied upon by the organization, viz., first paragraph of Rule 10 of the Shop Crafts Agreement, was written many years prior to provisions of the Vacation Agreement covering paid vacations and the filling of vacation assignments and, therefore, can not reasonably be contended as having been intended to apply to vacation assignments. Moreover, formal interpretation of Referee Morse to the effect that the penalty provision as contained in Rule 10 (Shop Crafts Agreement) has no application to vacation assignments has always been controlling on the T&NO by reason of and as evidenced by (a) Article 14 of the Vacation Agreement and the additional stipulation by joint committee authorized thereunder when they submitted the identical question of the instant case to Referee Morse for decision, (b) action of the R.E.D. in withdrawing the Broussard case (c) twelve years of acquiesence in Referee Morse's decision by System Federation No. 162 on the T&NO (d) record and findings by Referee Wenke in Award 1259, and (e) an expressed acknowedgment by the Secretary-Treasurer of System Federation No. 162, who was a negotiator and signer of the Shop Office Agreement on the T&NO. The organization's alleged supporting rule having no application to the vacation situation in the instant case, the claim is without merit.

**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**