Award No. 2451
Docket No. 2170
2-IC-CM-'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. 99, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Carmen)

ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1—That under the current agreement carman helper R. E. Wells, was unjustly compensated at the straight time rate for service performed on January 3, 1955.

2—That accordingly the Carrier be ordered to compensate the aforesaid carman helper additionally, in the amount of four (4) hours pay at the straight time rate for the above date.

EMPLOYES' STATEMENT OF FACTS: Carman helper R. E. Wells, hereinafter referred to as the claimant, regularly assigned on the running repair track, McComb, Miss., from 7 A. M. to 12 Noon, and 1 P. M. to 4 P. M., Monday through Friday, with rest days of Saturday and Sunday, was instructed on Friday, December 31, 1954 by the foreman to report for work on Monday, January 3, on the 3 P. M. to 11 P. M. shift, to fill in for car oiler E. E. McDaniel, while he was on his annual earned vacation.

The carrier has declined to adjust this dispute on a basis satisfactory to the employe.

The agreement effective April 1, 1935 as subsequently amended is controlling.

POSITION OF EMPLOYES: It is submitted that when the claimant changed from working his regular assigned shift hours of 7 A. M. to 12 Noon, and 1 P. M. to 4 P. M., to the shift hours of 3 P. M. to 11 P. M., on Monday, January 3, 1955, in compliance with instructions of the foreman, that he was entitled to be compensated for the hours 3 P. M. to 11 P. M. on Monday, January 3, under the clear and unambiguous provisions of Rule 14, which in pertinent part reads as follows:

"Employes changed from one shift to another will be paid overtime rate for the first shift of each change. Employes working

what was meant by its terms and are the least likely to be mistaken as to its intention; that each party is alert to protect his own interests and to insist on his rights; and that whatever is done by the parties during the period of the performance of the contract is done under its terms as they understood and intended it should be. Parties are far less likely to have been mistaken as to the meaning of their contract during the period when they are in harmony and practical interpretation reflects that meaning than when subsequent differences have impelled them to resort to law and one of them then seeks an interpretation at variance with their practical interpretation of its provisions . . ."

It is clear that the mutual construction given by the parties to the whole agreement, including the Vacation Agreement, over a period of almost twelve years should have been accepted by the Board as evidence of the proper interpretation of the agreement. The findings of the Board in Awards 1806 and 1807 were fundamentally wrong and should not be followed as a precedent.

There is no basis for the claim in this dispute, and it should 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.

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 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