

Award No. 2455

Docket No. 2174

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 the following carmen were improperly compensated at the straight time rate for service performed on the dates as shown opposite their names:

P. E. Bond	—May 3, May 8, May 20, May 25, 1953 June 5, June 10, June 18, June 30, 1953 September 6, September 18, 1953
A. C. Wood	—May 3, May 15, May 22, 1953 July 15, July 28, 1953 November 28, 1953 December 3, 1953 February 3, 1954 May 5, May 17, 1954
M. D. McKinney	—June 18, June 30, 1953 July 5, 1953
L. C. Chambliss	—June 22, 1953 July 6, 1953
H. C. Outland	—November 4, November 8, 1953 May 18, May 24, 1954

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

EMPLOYES' STATEMENT OF FACTS: Carmen P. E. Bond, A. C. Wood, M. D. McKinney, L. C. Chambliss, and H. C. Outland, hereinafter referred to as the claimants, regularly assigned to work on the repair track, Bluford, Illinois, from 7 A. M. to 3 P. M., Monday through Friday, with rest days of Saturday and Sunday, were instructed by the foreman to relieve train yard car inspectors who were off on their annual earned vacation on the following dates and shifts; and the claimants returned to their regular assigned position on repair track as shown below:

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 dissents to Awards Nos. 2083, 2084, 2197, 2205, 2250, 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