Award No. 2471
Docket No. 2269
2-GN-EW-'57

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Carl R. Schedler when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 101, RAILWAY EMPLOYES DEPARTMENT, A. F. of L.-C. I. O. (Electrical Workers)

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement Electricians M. A. Lunceford, H. K. Olson and Electrician Helpers A. G. Adams and L. A. Schroyer were improperly denied the right to work Labor Day, September 6, 1954.

2. That accordingly the carrier be ordered to compensate the aforesaid employes each in the amount of 8 hours' pay at the applicable time and one-half rate for September 6, 1954.

EMPLOYES' STATEMENT OF FACTS: The Great Northern Railway Company, hereinafter referred to as the carrier, at Spokane, Washington employs Electricians M. A. Lunceford, H. K. Olson, and Electrician Helpers A. G. Adams and L. A. Schroyer, hereinafter referred to as the claimants.

At Spokane, Washington, the carrier on Sunday prior to and subsequent to September 6, 1954, employed two electricians on the first shift, one on the second shift and two on the third shift, one electrician helper on the first shift and one on the third shift.

On Labor Day, September 6, 1954, one electrician was employed on the first shift, none on the second shift, and two on the third shift. No electrician helpers were assigned on September 6, 1954.

The claimants were not permitted to work on Labor Day, September 6, 1954.

The dispute was handled with carrier officials designated to handle such affairs, who all declined to adjust the matter.

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

POSITION OF EMPLOYES: It is submitted that the facts show the carrier employed two electricians and one electrician helper on the first shift,

"It is a fundamental rule of contract construction that alleged oral understandings cannot be permitted to vary the terms of a written document."

In Award 2839 of the Third Division, with Luther W. Youngdahl participating, the Board stated:

"The danger of permitting oral arrangements, made before or contemporaneously with the execution of written contracts, to modify or contradict the terms of the written agreement is readily apparent. If such an oral agreement could be used as a defense against Rule 21, a similar defense could also be used against every other rule in the written contract. It is obvious the contract would lose its efficacy and usefulness in the settlement of disputes if such a procedure were permitted. When parties enter into written contracts, they are presumed to evidence in writing the results of their oral discussions. It is an elementary rule of law that such written contracts cannot be modified or contradicted by contemporaneous oral agreements. Aside from the legal aspect involved, it would be very dangerous practice in labor disputes to permit oral agreements to affect the terms of a written contract. The very purpose of the writing is to bind parties to certain rules and prevent claims of other understandings."

In effect, the employes herein are attempting through the medium of your Board to amend the guarantee rule of their agreement by having you hold that a purely oral statement is a new guarantee rule in the agreement, contrary to the provisions of the one now contained. That is beyond the power of this tribunal. The present rules make no requirement relative to any number of employes to be worked on holidays; nor do they specify any restrictions on management as to the number of employes who may or may not be worked on such holidays. Such restrictions cannot be added to the schedule by Board dictate.

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.

This case is identical with Award No. 2070 (Docket No. 1961), wherein the claim was denied, except in the instant case the classification of workers is different. We find nothing in the record in this case which would justify a different award.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 5th day of June, 1957.

DISSENT OF LABOR MEMBERS TO AWARD NO. 2471.

The majority in the instant findings refer to Award 2070. We dissented from that Award and are constrained for the same reasons to dissent from the instant findings and award.

The majority should have found here, as was found in Award 2378 that "the claimant was a regularly assigned employe within the intent and meaning of Section I of Article II of the agreement of August 21, 1954 and therefore eligible to receive the benefits thereof."

R. W. Blake
Charles E. Goodlin
T. E. Losey
Edward W. Wiesner
James B. Zink