Award No. 2640
Docket No. 2297
2-T&P-CM-'57

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee J. Glenn Donaldson when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 121, RAILWAY EMPLOYES' DEPARTMENT, AFL (Carmen)

THE TEXAS & PACIFIC RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement The Texas & Pacific Railway Company improperly denied Carmen F. L. Reese, C. A. McIntosh and Carmen Helpers H. H. McCarty, Leo Morrison, W. R. Bromley and J. J. Sanders employment on days involved in their regularly possessed work weeks of 40 hours consisting of 5 days of 8 hours each during the weeks beginning on Sunday, December 19, 1954, through January 3 or 4, 1955.

2. That accordingly The Texas & Pacific Railway Company be ordered to make these employes whole by additionally compensating each of them in the amount of 8 hours at the time and one-half rate on each of the dates of Saturday, December 25, 1954 and Saturday, January 1, 1955.

EMPLOYES' STATEMENT OF FACTS: The Texas and Pacific Railway Company, hereinafter called the carrier, made the election to regularly create and designate in the train yard a work week of 40 hours consisting of 5 days of 8 hours each with two consecutive days off in each 7. The consist of the force named in the statement of dispute, including the hours of shifts, the days of work and the off days thereof are specifically set forth in the submitted copy of memorandum identified as Exhibit A.

Nevertheless, the carrier ultimately elected to arbitrarily deprive Car Inspectors C. A. McIntosh and F. L. Reese of the awarded privilege to work one of their regularly stipulated days to work, namely, Saturday (Christmas Day), December 25, 1954, and likewise imposed the same loss of working hours upon Carmen Helpers J. J. Sanders, H. H. McCarty, Leo Morrison and W. R. Bromley, involving Saturday (New Year's Day), January 1, 1955. This is in face of the fact that each of said Saturdays was not scheduled as the off day

Thus it is apparent that, if there had been any rule or practice to prevent the carrier from letting the claimants have the holiday off with pay, prior to the agreement of August 21, 1954, it was repealed by that agreement.

The present claim is based on contentions which are directly contrary to the declared intent and purpose of the framers of the agreement of August 21, 1954. This fact was clearly demonstrated by this same brotherhood in its handling of its claim in Docket 1971, which resulted in Second Division Award 2070. In that case this very brotherhood and system federation carried its present contentions all the way out to their ultimate extreme absurdity. This same brotherhood and system federation argued that case orally before the referee on December 16, 1955, by reading a prepared memorandum and filing it. In that memorandum, this present petitioner told this Board:

> "Therefore, the only way that an employe on one of these positions, which are filled seven days per week, can be denied the right to work either one or all of the days of his assignment, is through the reduction in force rule . . ."

That case involved claims, like the present ones, but for February 22, 1955. It is a matter of record in that case that after those claims had been made, the carrier in that case had responded to these same contentions by abolishing several jobs on July 3, 1955 and then bulletining identical new ones to start on July 5, 1955. It is a matter of record in that case that the result of that action was that the persons in question in that case lost the holiday pay for not working, as well as the punitive pay for being required to work on July 4, 1955. It is a matter of record in that case that this present petitioner made no claim against that carrier on behalf of the persons who thus lost both kinds of pay on July 4, 1955. The claim involved in Award 2070 was for February 22, 1955, rather than for July 4, 1955, and no claim for July 4, 1955, was ever made.

Therefore, the present petitioner contends ultimately that the railroads should abolish jobs on holidays, which they would have an undoubted right to do; rather than let the employes have the holidays off with pay, which is what this carrier did in this case. Thus the petitioner is asking the Board to issue a ruling which would have the effect of depriving the employes of the very holiday pay, for not working, which is what they got by the agreement of August 21, 1954.

This is surely the strangest position ever taken by the brotherhood.

In any event, Award 2070 is controlling, and it would require the denial of the present claims, if they were to be considered on the merits, even if there had been a practice requiring the carrier not to let employes have holidays before the agreement of August 21, 1954.

Therefore, the carrier respectfully requests the Board to dismiss or deny these claims.

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.

Claimants held five (5) day assignments on seven (7) day positions. In the year 1955-1956, Christmas and New Year holidays fell on Saturday, a day within claimants' assigned work week. They were notified in advance that they would be given the holiday off with pay each time. They complain that carrier without authority under the agreement denied them the right to work said days, thereby reducing their work week from five (5) days (40 hours) to four (4) days (32 hours) during the weeks in question. Claimants ask to be reimbursed for said loss of work at the punitive rate.

The organization relies on Rule 1, Section 1 (a), Rule 1, Section 2 (a), which relate to Hours of Service, as well as Rules 2 (d) and 2 (j) relating to Holiday Service. We find nothing in these rules to support the organization's contention. The first two rules delineate a work day and a work week respectively. These rules afford no guarantee of work on holidays (Award 1606). As expressed in Third Division Award 5097 a basic work day is provided "for the purpose of computing overtime." It may serve other purposes but it is no guarantee of working time in the sense the organization seeks to apply it here. Rule 2 (d) relates solely to "services performed" and none was performed upon the days here involved. Rule 2 (j) was intended simply to discourage the calling of an employe to work but a portion of a holiday. Once having started work on a holiday and thus having his personal plans for the day upset, he was entitled to complete the day unless released at his own request.

The whole tenor of the Railroad Organization's argument before Emergency Board No. 106, which lead up to the Holiday Agreement of August 21, 1954, was an appeal to be relieved of working on holidays but without loss of pay by so doing. To discourage such assignments they demanded the continuation of punitive rates if work was required. The General Counsel of the Employes' National Conference Committee disclaimed what is now obviously the organization's objective—when he stated, "This is not a wage movement in any sense of the word. It has no relation to wages * * *" The instant claims are based on contentions that are directly contrary to the declared intent of the framers of the 1954 Agreement. Then the organizations argued for holiday leisure to live as others; now these claimants seek the premium pay that is attendant upon working such holidays. If generally applied the great majority of railroad workers would indeed find in the word "holiday" a hollow ring. Such inconsistency we believe justified the Division in raising estoppel in Award 2358 and denying similar claims.

We find no justification in this docket for departure from the prior awards of this Division which have considered this question fully. We are in continued agreement with the reasoning set forth in many prior awards and for brevity's sake incorporate herein by reference the majority findings in Awards 2325 (Carter) and 2358 (Wenke).

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 24th day of October, 1957.

DISSENT OF LABOR MEMBERS TO AWARDS 2640 and 2641

The majority contends that the rules of the schedule agreement afford no guarantee of work on holidays and cite Award No. 1606. It will be noted from our dissent to that Award that we considered it erroneous.

It is apparent from the instant record that in bulletining the claimant's assignments the carrier specified the days of their weekly assignments and made no exception thereto in the event of a holiday falling within their regular bulletined assignments. It is presumed that the parties understood the import of the agreement and if the carrier intended that the employes would not be worked on holidays the rules should have been written with such exception stated therein. No exception was made and the assignments were bulletined in accordance with the rules of the schedule agreement; therefore to permit the carrier to unilaterally change the assignments because of a holiday is simply allowing the carrier to evade its obligation to work the claimants on their regular assignments.

We do not agree with the findings of the majority that the Division was justified in raising estoppel in Award 2358. There the majority asserted that the claimants were estopped from asserting a different position than that presented to Emergency Board No. 106. First of all, the subject matter here was not the subject matter presented to the Emergency Board. Furthermore, the view presented by the instant majority, as well as the view set forth in the findings in Award 2325, ignores the controlling schedule agreement and the established rule, founded on good reason, that a written agreement will not be permitted to be changed or modified by any oral statements or arguments made by the parties in connection with the negotiation of the agreement. Any other rule would destroy the benefits of a written agreement.

The August 21, 1954 agreement provides for holiday pay, it does not deal with the right of employes to work holidays. The schedule agreement governs the right of employes to work holidays. (See Second Division Awards 2282 and 2378 to 2383, inclusive)

R. W. Blake

C. E. Goodlin

T. E. Losey

Edward W. Wiesner

James B. Zink