Award No. 3023
Docket No. 2773
2-GN-CM-'58

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Thomas A. Burke when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 101, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Carmen)

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement Car Inspectors Thomas J. Fox, George Magaffin, O. J. Helle and Carmen Helpers (Oilers) Billie Cowan, Roy Osborne, Ernest Kuns and Leon P. Woodman, were improperly denied the right to work February 22, 1956.

2. That accordingly the Carrier be ordered to compensate the aforementioned employes each in the amount of eight (8) hours' pay at the applicable time and one-half rate for Washington's Birthday, February 22, 1956.

EMPLOYES' STATEMENT OF FACTS: At the Everett Train Yard at Everett, Washington, the carrier on Sundays prior to and after February 22, 1956, employed two inspectors and one helper on the first shift; two inspectors and no helpers on the second shift and two inspectors and one helper on the third shift.

On February 22, 1956, the carrier reduced the force to one inspector on the first shift and one inspector on the second shift, and two inspectors on the third shift.

The claimants were not permitted to work on the dates in question.

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 that the carrier employed two inspectors and one helper on the first shift and two inspectors and no helpers on the second shift and two inspectors and one helper on the third shift on Sunday, which means that they, under Rule 11(b) C, reading:

must also find the instant claim of no merit whatsoever and render a denial decision consistent with the decisions of the afore-mentioned Second Division denial awards.

CONCLUSION

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.

The employes contend that Car Inspectors Fox, Magaffin, Helle, and Carmen Helpers Cowan, Osborne, Kunz and Woodman were improperly denied the right to work on February 22, 1956. It is undisputed that they did not work that day, but Carrier paid the claimants for eight (8) hours at the applicable straight time rate for Washington's birthday as Section 1 of Article II of the August 21, 1954 Agreement provides it shall.

There is no rule in the current agreement between the parties which requires that a specific number of employes shall be worked on holidays.

However, the employes rely on a verbal understanding with the carrier resulting from conferences held in the year 1950, that forces on the holidays would not be reduced below the number worked on Sundays.

The facts are not in dispute. The Carrier did tell the Organization that it would employ the same number of employes on holidays as were worked generally on Sundays. And then in letters dated October 11, 1954 and October 19, 1954 the Carrier revoked or cancelled the understanding of 1950 and stated the reasons therefor.

What is the effect of the oral "understanding" of 1950? Does it rise to the dignity of a contract? Or an Agreement?

Can representatives of the Carrier and the Organization by oral "understanding" abrogate or modify the provisions of a written agreement entered into by the parties after serious deliberation and negotiation in collective bargaining? We think not.

Many of the elements necessary to enter into a binding agreement are missing. There was no offer and acceptance. There was no consideration. The statement made by the Carrier's representative was simply an expression of intent. It was vague and indefinite. It was in the nature of an unilateral concession.

The same question was considered by this Board in Awards 2097 and 2471 and in each instance the claim was denied.

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 3rd day of December, 1958.

DISSENT OF LABOR MEMBERS TO AWARDS NOS. 3023 TO 3039, INCLUSIVE

The premise that the understanding of 1950 is an "at will" contract terminable by either party with or without reason is fallacious. Ignored or overlooked is the fact that the understanding was reached when, in accordance with Sec. 2 Second of the Railway Labor Act, the matter was decided in conference between the representatives of the carrier and the representatives of the employes. The understanding acquired added force from the fact that for four years it was honored as an agreement and the fact that it was so recognized and described in the carrier's letters of October 11 and October 19, 1954 seeking to terminate the agreement. Clearly the understanding relates to a working condition and the only way in which it could validly be changed or modified is in accordance with the "General Duties" of the Railway Labor Act.

The same question between the same parties was considered by this Board in Awards Nos. 2378 to 2383, inclusive, and in each instance the claim was sustained. There is nothing present in this case to justify the instant denial award.

/s/ James B. Zink

/s/ R. W. Blake

/s/ Charles E. Goodlin

/s/ T. E. Losey

/s/ Edward W. Wiesner