Award No. 3038
Docket No. 2919
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 Carmen S. Stauffer, J. Foerst, C. Parker, R. Bennett and T. Woods were improperly denied the right to work May 30, 1957, and, further, Carmen J. Foerst, T. Woods, C. Harris, L. Williams and C. Jones were improperly denied the right to work July 4, 1957.

2. That accordingly the Carrier be ordered to compensate the aforesaid employes each in the amount of eight (8) hours' pay at the applicable time and one-half rate for May 30, 1957, and July 4, 1957, as set out above.

EMPLOYES' STATEMENT OF FACTS: At the Interbay Train Yard, Seattle, Washington, the carrier on Sundays prior to and after May 30, and July 4, 1957, employed three (3) inspectors on the first shift, four (4) inspectors on the second shift, and four (4) inspectors on the third shift.

On May 30 and July 4, 1957, the carrier reduced the force to two (2) car inspectors on the first shift, two (2) car inspectors on the second shift, and two (2) car 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, all of whom declined to adjust the matter.

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

"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."

In **Award No. 2471,** Second Division of the NRAB, with Referee Schedler, it was stated in the findings:

"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."

Since this instant claim of the carmen of this property involves a dispute identical to those contained in Second Division **Awards Nos. 2070, 2097 and 2471** and in which Awards **the claims of the employes were denied,** your Board 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.

This docket presents the same questions as were raised in Docket No. 2773 and was answered by our Award No. 3023. In view of what was said there, this claim should be denied.

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