Award No. 3056
Docket No. 2997
2-GN-CM-'58

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Dudley E. Whiting when 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 Waldo D. Lasley and Boyd Allred were improperly denied the right to work December 25, 1957. Further, under the current agreement, Carmen Peter McEntire, H. A. Testerman, M. J. Yerkovich and B. D. Kennebeck were improperly denied the right to work January 1, 1958.

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 December 25, 1957, and January 1, 1958, as set out above.

EMPLOYES' STATEMENT OF FACTS: At Klamath Falls, Oregon, the carrier on Sundays prior to and after December 25, 1957 and January 1, 1958, employes twelve carmen at that point.

On December 25. 1957, the carrier reduced the force to ten carmen, and on January 1, 1958, the carrier reduced the force to seven carmen.

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.

POSITION OF EMPLOYES: It is submitted that the facts show that the carrier employed twelve carmen at Klamath Falls on Sundays, which means that they, under Rule 11(b) C reading:

"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.

Parties to said dispute were given due notice of hearing thereon.

Disposition of this claim is governed by Award No. 3043 (Docket No. 2424).

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 8th day of December, 1958.

DISSENT OF LABOR MEMBERS TO AWARDS 3043 TO 3060, INCLUSIVE

The majority states that similar claims against this carrier were sustained on the basis of a verbal understanding that forces would not be reduced on holidays below that worked on Sundays. There is no basis for denying the

instant claims on the theory that the verbal understanding between this carrier and System Federation No. 101 was cancelled by the National Agreement of August 21, 1954. In Award 2378 this theory was carefully examined by the referee, former Chairman of the Emergency Board, and it was found that there was no language in the report of Emergency Board No. 106, on which the agreement of August 21, 1954 is premised, or in the agreement itself which would have the effect of setting aside the parties' verbal understanding of 1950 relating to the extent to which carrier will work its forces on a workday of their regularly assigned workweek.

Since it was held in Award No. 2378 that it was not the intention of the Emergency Board, nor of the parties signatory to the August 21, 1954 agreement, to abrogate such agreements, "Rather . . . it was intended to keep them in full force and effect," it can readily be seen that there is no basis for the present inconsistent holding. It is evident that Awards 2378 to 2383, inclusive, were correct and should have been adhered to in Awards 3043 to 3060, inclusive.

/s/ James B. Zink

/s/ R. W. Blake

/s/ Charles E. Goodlin

/s/ T. E. Losey

/s/ Edward W. Wiesner