Award No. 3216
Docket No. 3089
2-GN-F&O-'59

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee D. Emmett Ferguson when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 101, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.—C. I. O. (Firemen and Oilers)

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement Roundhouse Laborers Paul L. Lynn and Thressa Twigg were improperly denied the right to work Thanksgiving Day, November 28, 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 November 28, 1957.

EMPLOYES' STATEMENT OF FACTS: At the Whitefish Roundhouse, Whitefish, Montana, the Great Northern Railway Company, hereinafter referred to as the carrier, there were employed prior to and following Thanksgiving Day, November 28, 1957, on Sundays, a regular assigned work force of four laborers on the first shift. On November 28, 1957 the carrier reduced the force on the first shift to two laborers.

The claimants were not permitted to work Thanksgiving Day, November 28, 1957.

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 four laborers on the first shift on Sundays, which means that they, under Rule 17(b) C, reading:

"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."

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 aforementioned 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.

In this and companion cases, this Division finds itself confronted with conflicting awards of its own making. Continuity of interpretation and harmony in awards is a praiseworthy aim and would ultimately achieve the ambitions of the Railway Labor Act. But an error once committed should not be slavishly followed. Board awards are final and binding as to the

single case presented and cannot be appealed. They are not law, as superior court decisions are the law which must be followed by lower courts.

It is our duty to examine previous awards and where possible to harmonize the instant case with the best thought of preceding cases. We should not lightly disregard previous awards because that would neglect the purpose of our being.

In evaluating previous awards and giving them proper weight we should measure both quantity and quality. The reasoning and experience of the author, as well as the time, place and circumstances in which the award was written, all have some bearing on its value as a guide. If it is a leading case which has been approvingly cited in a succession of other awards, that also should be noted.

After applying these considerations to the docket at hand and without admitting that we are basing our conclusions solely on previous awards we come to the merits of the claim.

It is asserted and not denied that there was an oral expression of the carrier (subsequently characterized as a verbal understanding) which was placed in effect and practiced until the agreement of August 21, 1954 became effective. Immediately thereafter, carrier notified the organization that the new National Agreement with its modification of pay obviated the reason for the old understanding and rendered it void.

We are of the opinion that the conditions of 1950 were drastically changed in 1954 and that the 1954 agreement was written in contemplation of an added benefit for the employes. We are of the further opinion that Section 5 of Article II preserved practices "governing the payment for work performed on a holiday." This does not preserve the number of employes to be worked on a holiday.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 25th day of May 1959.

DISSENT OF LABOR MEMBERS TO AWARDS NOS. 3216, 3217, 3218, and 3219.

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 Section 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 agree-

ment. 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.

James B. Zink

R. W. Blake

Charles E. Goodlin

T. E. Losey

Edward W. Wiesner