Award No. 3408
Docket No. 3084
2-GN-CM-'60

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee James P. Carey, Jr., when award was rendered.

PARTIES TO DISPUTE:

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

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement Car Inspectors Ole J. Holland and George Magaffin and Oilers and Brassers Ed N. Oman and Roy Osborne were improperly denied the right to work February 22, 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 February 22, 1958.

EMPLOYES' STATEMENT OF FACTS: At the Everett Train Yard, Everett, Washington, the carrier on Sundays prior to and after February 22, 1958, employed two (2) inspectors and one (1) helper on the first shift, two (2) inspectors and no helpers on the second shift, and two (2) inspectors and one (1) helper on the third shift.

On February 22, 1958, the carrier reduced the force to one (1) inspector on the first shift, one (1) inspector on the second shift, and two (2) inspectors on the third shift.

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

The dispute was handled with carrier officials designated to handle such affairs, all of whom declined to adjust to 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, two

following claim, which is identical in principle with the instant claim, to the Second Division of the NRAB:

"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 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.

Claimants did not work the holiday of February 22, 1958, but were paid the applicable pro rata rate for that day as provided in Article II, Section 1 of the Agreement of August 21, 1954. They contend they were entitled to work the holiday because of an oral understanding reached with the carrier in 1950 and therefore seek additional compensation at time and one-half rate.

The basis of the verbal understanding was an expression of the General Superintendent of Motive Power that he thought the carrier generally could use as many employes on holidays as on Sundays and that he would issue instructions to that effect. On Sundays before and after February 22, 1958, two inspectors and one helper worked the first shift; two inspectors worked the second shift and one helper worked the third shift. On February 22, one inspector was employed on each of the first and second shifts and two inspectors on the third shift.

The carrier maintains that the oral understanding did not represent a binding enforceable agreement but was merely a unilateral concession made in an attempt to stabilize earnings by avoiding excessive reduction of forces on holidays wherever possible. The carrier asserts that with the advent of the August 21, 1954 Agreement which provides for compensation for holidays not worked, the reason for the 1950 concession was removed and the oral understanding was therefore terminated.

The current agreement between the parties effective September 1, 1949, does not require the carrier to work regularly assigned employes on holidays when their services are not needed. Unless the oral understanding mentioned constitutes a valid and enforceable agreement, there was no restriction of the carrier's right to determine the number of employes required for holiday work.

The point at issue has been before this Board on a number of prior occasions involving the same parties. Identical claims were denied in our Awards Nos. 2097, 2471, 3023 and 3043. In our Awards Nos. 2378 to 2383 inclusive, such claims were sustained. We think the reasoning and result reached in Awards Nos. 3023 and 3043 correctly determined the nature of the oral understanding relied on in the instant claims, and that those awards should be adhered to. The findings in Award No. 2378 and companion awards to the effect that the oral understanding of 1950 was a binding agreement is deemed to have been ill advised and erroneous. In view of our conclusion that the 1950 oral understanding did not attain the dignity of a binding agreement, the carrier was free to terminate it at will and we find it unnecessary to decide what, if any, effect the August 21, 1954 agreement may have had thereon.

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 March 1960.

DISSENT OF LABOR MEMBERS TO AWARD NO. 3408

The majority thinks that the reasoning and result reached in Awards Nos. 3023 and 3043 correctly determined the nature of the oral understanding relied on in the instant claim; in other words, that the oral understanding was a unilateral concession or an at will contract. We disagree with the Idea since in an at will contract no definite terms are involved and in the present instance it was definitely agreed in conferences attended by representatives of the organizations and the carrier that forces on the Holidays would not be reduced below the number worked on Sundays.

The oral understanding relates to "working conditions" and therefore falls within the purview of Section 6 of the Railway Labor Act and under the terms of the Act is terminable only upon the happening of certain conditions. That provision of the Act provides for important rights to flow from its provisions that a party intending to change an agreement shall give written notice of the desire for a change in rules or working conditions. Sec. 2 Seventh further provides that "No carrier, its officers or agents, shall change the rates of pay, rules or working conditions of its employes, as a class as embodied in agreements except in the manner prescribed in such agreements or in section 6 of this Act."

The majority in holding that "The findings in Award No. 2378 and companion awards to the effect that the oral understanding of 1950 was a binding agreement is deemed to have been ill advised and erroneous" ignores the fact that in those awards it was determined that the August 21, 1954 Agreement did not have any effect on the oral understanding, whereas the majority here states "we find it unnecessary to decide what, if any, effect the August 21, 1954 agreement may have had" on the oral understanding. There being no evidence that the understanding had been changed in accordance with the requirement of Section 6, the majority should have held that the oral understanding was binding and the carrier had no license to terminate it.

J. B. Zink

R. W. Blake

C. E. Goodlin

T. E. Losey

E. W. Wiesner