Award No. 3729
Docket No. 3553
2-GN-CM-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson, 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 Carman O. J. Holland and Oiler & Brasser C. P. McClelland were improperly denied the right to work September 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 September 1, 1958, when they were denied the right to work.

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

On September 1, 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 September 1, 1958.

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 two inspectors and one oiler & brasser on the first shift, two inspectors and no oiler & brasser on the second shift, and two inspectors and one oiler & brasser on the third shift on Sundays, which means that they, under Rule 11 C reading:

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 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."

Since this instant claim of the carmen of this property involves a dispute identical to those contained in Second Division Awards No. 2070, 2097, 2471, 3023 through and including 3039, 3043 through and including 3060 and 3216 through and including 3219, 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 of 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.

This docket presents the same questions as were raised in Award No. 3726 and necessitates the same conclusion.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 6th day of April 1961.

DISSENT OF LABOR MEMBERS TO AWARDS 3726 TO 3729, INCLUSIVE

We consider as erroneous the awards accepted by the majority as authority for denying this claim. Under the circumstances we consider it unnecessary to do other than incorporate herein by reference our dissents to the awards cited by the majority as giving the weight of authority for denying the instant claim.

Edward W. Wiesner

R. W. Blake

Charles E. Goodlin

T. E. Losey

James B. Zink