Award No. 3890

Docket No. 3634

2-GN-CM-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Carroll R. Daugherty 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 Oscar Kines and Oiler & Brasser Ed Oman were improperly denied the right to work Thanksgiving Day, November 27, 1958.

2. That under the current agreement Carman Oscar Kines was improperly denied the right to work Christmas Day, December 25, 1958.

3. That under the current agreement Carman O. J. Holland was improperly denied the right to work New Year's Day, January 1, 1959.

4. 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 the dates listed, when they were denied the right to work.

EMPLOYES' STATEMENT OF FACTS: At the Everett Train Yard, Everett, Washington, the carrier on Sundays prior to and after November 27, 1958, December 25, 1958, and January 1, 1959, employed two (2) inspectors and one (1) oiler & brasser on the first shift, three (3) inspectors and no oiler & brasser on the second shift, and two (2) inspectors and two (2) oilers & brassers on the third shift.

On November 27, 1958, December 25, 1958, and January 1, 1959, 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 dates in question.

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.

As in Award No. 3889, so here: The instant claim cannot be allowed.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 15th day of December 1961.

DISSENT OF LABOR MEMBERS TO AWARDS 3889 AND 3890

The majority cites prior awards handed down by this Division, specifically Award 3726, involving the same carrier, the same System Federation, and the same issue as reason for finding that the instant case cannot be found to merit a sustaining award.

We wish to point out that in Awards 2378 through 2382, inclusive, involving the same carrier, the same System Federation and the same issue the cases were found to merit sustaining awards. These held that the oral agreement was violated. In view of these awards and in view of the fact that a dissent was filed on each of the awards referred to by the majority pointing out the erroneousness, the statement by the majority that "The Division has

carefully once more reviewed the contentions of the parties, the provisions of the agreements, and the prior awards . . ." can hardly be considered accurate. The irony of it is that the majority knew about but ignored the awards which definitely supported the employes.

As pointed out in the dissent to Award 3408, incorporated by reference in dissent to Award 3726, there being no evidence that the oral agreement, which also governs here, had been changed in accordance with the requirement of Section 6, it is crystal clear that the majority should have held that the oral agreement was binding and that the carrier had no license to terminate it. The present award is erroneous in that it assumes that the parties performed a useless act in making the oral agreement. The oral agreement dictated a sustaining award.

Edward W. Wiesner
C. E. Bagwell
T. E. Losey
E. J. McDermott
James B. Zink