Award No. 3022

Docket No. SG-2979

NATIONAL RAILROAD AJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

KANSAS CITY TERMINAL RAILWAY COMPANY

STATEMENT OF CLAIM: (a) Claim that P. A. Woodling, whose regular assignment was that of a signalman in the Construction Forces seniority district, be paid the difference between straight time rate of $1.00 per hour and time and one-half rate for all services performed on Sunday, May 10, 1942 (his assigned day off duty), when he was required by the management to fill the position of leading signal maintainer, second shift, at Tower 5, taking the place of P. J. Marks, the employe regularly assigned to such position. Amount claimed $4.00.

(b) Claim that P. A. Woodling be paid the difference between the straight time rate of 95 cents per hour and time and one-half rate for services performed on his regular assignment as signalman in the Construction Forces seniority district on Saturday, May 16, 1942, the first tour of duty he worked following his release from being required to perform service on second shift, Tower 5, from May 10 to 15, 1942, inclusive. Amount claimed $3.80.

(c) Claim that P. A. Woodling be paid the difference between straight time rate of 95 cents per hour and the time and one-half rate for all services performed on Sunday, May 24, 1942 (his assigned day off duty), when he was required by the management to fill the position of signal maintainer, first shift, at Tower 4, taking the place of O. W. Wikke, the employe regularly assigned to the position. Amount claimed $3.80.

(d) Claim that P. A. Woodling be paid the difference between straight time rate of 95 cents per hour and the time and one-half rate for the eight-hour tour of duty on Thursday, June 18, 1942, when he was required by the management to fill the position of signal maintainer, third shift, at Tower 8, taking the place of L. P. Dollison, the employe regularly assigned to the position; and claim that he be paid the difference between straight time rate of 95 cents per hour and the time and one-half rate for the eight-hour tour of duty worked on his regular assignment in Construction Forces on Thursday, June 25, 1942, following his release from being required to perform service on third shift, Tower 8, from June 18 to 23, 1942, inclusive. Amount claimed $7.00.

(e) Claim that P. A. Woodling be paid the difference between straight time rate of 95 cents per hour and the time and one-half rate for all services performed on Sunday, June 21, 1942 (his assigned day off duty), when he was required by the management to fill the position of signal maintainer, third shift, at Tower 8, taking the place of L. P. Dollison, the employe regularly assigned to the position. Amount Claimed $3.80.

(f) Claim that P. A. Woodling be paid the difference between straight time rate of $1.00 per hour and the time and one-half rate for the eight-hour

tour of duty on Monday, July 20, 1942, when he was required by the management to fill the position of Leading Signal Maintainer, third trick, tower 5, taking the place of J. L. Benney, the employe regularly assigned to the position; and claim that he be paid the difference between straight time rate of 95 cents per hour and the time and one-half rate for the eight-hour tour of duty worked on his regular assignment in Construction Forces on Monday, July 27, 1942, following his release from being required to perform service on the third trick, tower 5, from July 20 to 23, 1942, inclusive. Amount claimed $7.80.

(g) Claim that P. A. Woodling be paid the difference between the straight time rate of 95 cents per hour and the time and one-half rate for all services performed on Thursday, September 3, 1942, when he was required to fill the position of signal maintainer, second trick, tower 4, taking the place of L. C. Eckenreed, the employe regularly assigned to the position; and claim that he be paid the difference between straight time rate of 95 cents per hour and the time and one-half rate for the eight-hour tour of duty worked on his regular assignment in Construction Forces on Tuesday, September 5, 1942, following his release from being required to perform service on second trick, Tower 4, from September 3 to 5, 1942, inclusive. Amount claimed $7.60.

(h) Claim that P. A. Woodling be paid the difference between the straight time rate of 95 cents per hour and the time and one-half rate for all services performed on Thursday, October 29, 1942, when he was required to fill the position of signal maintainer, second trick, taking the place of L. C. Eckenreed, the employe regularly assigned to the position; and claim that he be paid the difference between straight time rate of 95 cents per hour and the time and one-half rate for the eight-hour tour of duty worked on his regular assignment in Construction on Monday, November 2, 1942, following his release from being required to perform service on second shift, tower 4, from October 29 to November 1, 1942, inclusive. Amount claimed $7.60.

EMPLOYES' STATEMENT OF FACTS: P. A. Woodling was regularly assigned as a signalman in construction forces with a starting time of not earlier than 7:00 A. M. nor later than 8:00 A. M., with Sundays and seven specified holidays as assigned days off duty. Construction forces are defined in Article I, Section 1 (b), which reads:

> "Construction Forces covers the class of employes filling the regular established six (6) day a week assignment and work periods of one shift a day. Sunday and certain holidays as hereinafter named not considered regular assignments for this class of employes. Six Day Assigned Forces will perform work herein specified at any point as may be necessary to meet the requirements of the service."

The instant claims cover working periods when Woodling was required by the management to fill regularly assigned maintenance force positions, on a separate seniority district, and when so required at various times between May 10 and November 2, 1942, Woodling worked outside his regularly assigned hours, involving Sundays and changed shifts. The current signalmen's agreement contains the following relevant rules:

"Article VI, Section 2.

> Work performed on Sundays and the following legal holidays—namely, New Year's Day. Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas (provided when any of the above holidays fall on Sunday, the day observed by the State, Nation, or by proclamation shall be considered the holiday), shall be paid at the rate of time and one-half, except that employes necessary to the continuous operation of the Carrier and who are regularly assigned to such service will be assigned one regular day off duty in seven, Sunday if possible, and if required to work on such regularly assigned seventh day off duty will be paid at the rate of time and one-half time; when such assigned day off duty is not Sunday, work on Sunday will be paid for at straight time rate."

And why was no change ever negotiated? Obviously no one aware of the facts would suppose that any of the employe representatives would negotiate for less than all possible and potential advantages under both the Vacation Agreement and the working rules. It is apparent that Referee Wayne L. Morse agrees on this point, because he makes the following statement in the Award of November 12, 1942, under his decision pertaining to questions raised under Article 12 (a) of the Vacation Agreement:

> "* * * Throughout their arguments in the record the employes state that the procedures of negotiation for making any adjustments in the working rules that may be necessary in light of the special conditions created by the vacation agreement are open to the carriers. They imply —in fact, definitely state—that **the carriers have not pressed for such negotiations.** This referee believes that it is probably true that there have been few negotiations under Article 13, but at the same time **he entertains some doubts as to what would be accomplished by such negotiations,** if the representatives of the employes held out for the **same technical and strict application** of the **working rules** to vacation problems as they contended for in the record of this case."

Because the carriers could not hope to gain any modification of the working rules to permit the provisions of the Vacation Agreement to be carried out, the Referee undertook to make such modifications as that in Article 12 (a) of the Vacation Agreement.

In Award 2340, in the "Opinion of Board," it is the Carrier who must pay because the parties did not re-negotiate on the property a rule which already had been awarded the Carrier in Article 12 (a) of the Vacation Agreement of December 17, 1941. In the "Findings" in Award 2340, the following statement appears, quoted in part:

> "* * * and, in the absence of a negotiated change as here, the Clerks Agreement will be enforced in accordance with its terms."

Article 13 of the Vacation Agreement does not say that the other Articles in that Agreement will be **void** unless and until such negotiations are completed: the Employes received the provisions favorable to **them** in the Vacation Agreement without re-negotiation locally. Neither does Article 13 indicate that the conflicting elements between agreements would be decided in favor of the working rules agreements rather than in favor of the Vacation Agreement—on the contrary, Article 13 states that "* * * such changes or understandings shall **not** be inconsistent with **this agreement.**" (emphasis added) Article 13 of the Vacation Agreement of December 17, 1941, is quoted:

> "13. The parties hereto having in mind conditions which exist or may arise on individual carriers in making provisions for vacations with pay agree that the duly authorized representatives of the employes, who are parties to one agreement, and the proper officer of the carrier may make changes in the working rules or enter into additional written understandings to implement the purposes of this agreement, provided that such changes or understandings shall not be inconsistent with this agreement."

In addition to the foregoing it is the Carrier's request that your Honorable Board review the written opinion of the Carrier members of your Board on this subject, in their "Dissent to Award No. 2340, Docket CL-2430," and that your Board reconsider and set aside the decision in Award 2340 by dismissing this case account lack of jurisdiction.

OPINION OF BOARD: The Claimant was a regularly assigned Signalman in the construction forces with Sundays and holidays as assigned days off duty. Signalmen in the construction forces are not regarded as necessary to the continuous operation of the Carrier.

This claim consists of eight specified items based upon twelve alleged violations of the current agreement. Items (b), (d), (f), (g) and (h) are based on alleged violations of Article VI, Section 4, which provides:

"Employes changed from one shift to another will be paid overtime rates for the first shift of each change. Employes working two (2) or more shifts on a new shift shall be considered transferred. This will not apply when shifts are temporarily exchanged at the request of the employes involved. Employes displacing regularly assigned employes in the exercise of their seniority rights, shall cause no extra expense to the Carrier."

The record shows facts indicating violations of the foregoing rule as alleged. The claims are for the difference in the straight time rate and the time and one-half rate which Claimant contends is due him when he was required to make the changes in shifts set forth in the claim. We are of the opinion that the claims are sustainable if the quoted rule of the current agreement is the only rule having application to the facts recited in the record.

Items (a), (c) and (e) are based on alleged violations of Article VI, Section 2, which provides:

"Work performed on Sundays and the following legal holidays—namely, New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas (provided when any of the above holidays fall on Sunday, the day observed by the State, Nation, or by proclamation shall be considered the holiday), shall be paid at the rate of time and one-half, except that employes necessary to the continuous operation of the Carrier and who are regularly assigned to such service will be assigned one regular day off duty in seven, Sunday if possible, and if required to work on such regularly assigned seventh day off duty will be paid at the rate of time and one-half time; when such assigned day off duty is not Sunday, work on Sunday will be paid for at straight time rate."

The evidence indicates that violations of this rule occurred as alleged. The claims are for the difference in the straight time rate and the time and one-half rate which Claimant contends is due him when he was required to work regularly assigned days off (Sundays) as set forth in the claim. We are of the opinion also that these claims are sustainable if the quoted rule of the current agreement is the only rule applying to the facts recited in the record.

It is evident from the record the work performed by Claimant for which the time and one-half rate of pay is claimed, grew out of the granting of vacations to the regular occupants of the positions. It is the contention of the Carrier that the Vacation Agreement of December 17, 1941, the parties to this dispute being parties to that Agreement, controls the disposition of the foregoing claims and requires a finding of a lack of jurisdiction on the part of this Board to determine them, or, if jurisdiction exists, a denial of the claim under the provisions of the Vacation Agreement.

The granting of vacations with pay by agreement was an innovation which came into existence with the execution of the Vacation Agreement of December 17, 1941. It is the contention of the Carrier that this Board does not presently have the power to determine the issues raised by the confronting claims because of the provisions of Article 14 of the Vacation Agreement, providing as follows:

"Any dispute or controversy arising out of the interpretation or application of any of the provisions of this agreement shall be referred for a decision to a committee, the carrier members of which shall be the Carrier's Conference Committees signatory hereo, or their successors; and the employe members of which shall be the Chief Executives of the Fourteen Organizations or their representatives, or their successors. Interpretations or applications agreed upon by the carrier members and employe members of such committee shall be final and binding upon the parties to such dispute or controversy.

This section is not intended by the parties as a waiver of any of their rights provided in the Railway Labor Act as amended, in the event committee provided in this section fails to dispose of any dispute or controversy."

It is not disputed that the present claims have not been handled by the committee provided for in the foregoing rule. This affords the basis for the contention that this Board does not have the authority presently to pass upon the merits of the claims.

The contention of the Carrier that the claims should be denied upon their merits is founded primarily on the provisions of Article 12 (a) of the Vacation Agreement, which provides:

> "Except as otherwise provided in this agreement a carrier shall not be required to assume greater expense because of granting a vacation than would be incurred if an employe were not granted a vacation and was paid in lieu therefor under the provision hereof. However, if a relief worker necessarily is put to substantial extra expense over and above that which the regular employe on vacation would incur if he had remained on the job, the relief worker shall be compensated in accordance with existing regular relief rules."

It is argued by the Carrier that as the present claims arose out of the filling of positions of employes on vacation, that the foregoing Article of the Vacation Agreement supersedes the current Agreement in regard to the rate of pay.

It is apparent that in the negotiation of the Vacation Agreement of 1941, the parties signatory thereto intended that in consideration of the allowance of vacations on pay that the organizations would make certain concessions relative to the rates of pay of those filling the positions of employes on such vacations. Such concessions naturally were in conflict to some extent with the rules contained in the current schedules governing hours of service and working conditions. This has lead to much confusion as to the correct rules to be applied with respect to vacancies created by employes on vacation, the retention or establishing of seniority rights, regular and temporary relief, rates of pay for double-overs and shift changes, especially where employes covered by the regular working agreements are concerned.

In solving the difficulties that confront the Board in handling the present claims, we first deal with the contention of the Carrier that the rules contained in Article VI, Section 2 and Article VI, Section 4, of the current agreement have been superseded by Article 12 (a) of the Vacation Agreement of 1941. In this respect, we again call attention to the discussion of the relation of schedule rules to the provisions of the Vacation Agreement made by Referee Wayne L. Morse who had previously acted as referee in adjusting the differences of the parties during the mediation of the proposed Vacation Agreement which culminated in the approval of the Vacation Agreement of 1941. Later Referee Morse was designated by the Mediation Board to conduct hearings and issue an award with reference to certain questions concerning the meaning of the Vacation Agreement which were posed by and disagreed upon by the Joint Carrier-Employe Committee which was charged by the Agreement itself with the duty of interpreting and applying it. In performing this function, Referee Morse made the statements with reference thereto which we have heretofore alluded.

On this subject, Referee Morse in his interpretation of Rule 6 of the Vacation Agreement said:

> "Thus it is seen that it was not the intention of the Emergency Board that the vacation plan should be administered independently of existing working rules, but rather, that in those instances in which existing working rules if strictly applied, would produce unjust results, they should be modified through the process of collective bargaining negotiations conducted between the parties.
>
> At the mediation sessions which led to the so-called "Washington Settlement of December 1, 1941," this referee held many conversations with representatives of the employes and of the carriers, and as a result of those conversations, he knows it to be a fact that the parties reached the Washington settlement with the understanding that the vacation plan was to be subject to the rules agreements but that the parties would negotiate adjustments of any working rules in any existing agreements

which in their application would produce results contrary to the purpose of the vacation plan.

When the parties returned to Chicago and proceeded with their negotiations on vacations, which negotiations culminated in the vacation agreement of December 17, 1941, they well understood that existing rules agreements were applicable to the vacation plan unless modified in negotiations between them."

Again in his interpretation of the meaning and intent of Rule 12 (a) of the Vacation Agreement, the portion of the Agreement with which we are here primarily concerned, Referee Morse had this to say:

"As the referee has stated elsewhere in this decision, throughout the negotiations which led up to the Vacation Agreement, it was definitely understood by the parties that the vacation plan should not be administered independently of existing working rules, but rather, that in those instances in which existing working rules, if strictly applied, would produce unjust results, they should be modified through the processes of collective bargaining negotiations conducted between the parties, or, if necessary, through those procedures of the Railway Labor Act which provide for the settlement of disputes.

Articles 13 and 14 of the Vacation Agreement were proposed by the parties themselves, and it is to be assumed that the parties intended to use those articles in attempting to negotiate adjustments or settlements of differences arising between them over the application of existing working rules to the Vacation Agreement. At least the referee is satisfied, from the preponderance of the evidence in the record in this case, that the parties did not intend any blanket waiver or setting aside of existing rules agreements when they adopted the Vacation Agreement. * * * Nevertheless, it must be recognized that Article 12 (a) cannot be treated as surplusage. The parties agreed to it, and when they agreed to it, they must have intended it to have a meaning consistent with and reconcilable to the other portions of the agreement."

Article 13 of the Vacation Agreement, referred to by Referee Morse, contains the following language.

"The parties hereto having in mind the conditions which exist or may arise on individual carriers in making provisions for vacations with pay agree that the duly authorized representatives of the employes, who are parties to one agreement, and the proper officer of the carrier may make changes in the working rules or enter into additional written understandings to implement the purposes of this agreement, provided that such changes or understandings shall not be inconsistent with this agreement."

We necessarily conclude that where there is any conflict between the schedule agreement and the Vacation Agreement, the schedule agreement must be applied. On any matter upon which the schedule agreement does not deal, but which is covered by the Vacation Agreement, the Vacation Agreement applies. In other words, the Vacation Agreement is self-executing upon any matter covered by it which is not covered by any rule in the schedule agreement. But when the subject is covered by the schedule agreement, the Vacation Agreement is ineffective until such time as it has been made effective by the processes outlined in Article 13 of the latter agreement.

It is true that the parties have committed themselves to certain specific obligations in the Vacation Agreement definitely in conflict with the schedule agreement which they have agreed to put in force by negotiating changes in the schedule agreement that are consistent with the Vacation Agreement. But such commitments become operative only after they have been integrated into the schedule agreement by negotiation.

The record before us indicates a willingness on the part of the Organization to so negotiate and a refusal on the part of the Carrier to so do. The result is that Carrier is obliged to apply the schedule agreement as it is written. In

the writer's judgment, a failure by either party to the Vacation Agreement to negotiate amended rules to the schedule agreement amounting to a substantial compliance with the provisions of the Vacation Agreement constitutes a breach of that agreement with its consequent liabilities.

The Carrier cites the answer of Referee Morse to Illustration (b) contained in the Referee's answers to questions raised under Article 12 of the Vacation Agreement in support of its contention. We think that it does tend to sustain the position of the Carrier. On the other hand, with all due respect to the judgment of the eminent referee making the decision, we are of the opinion that its conclusion is incorrect when there is a schedule rule in conflict with the Vacation Agreement. The intimation in this decision that the Vacation Agreement supersedes a conflicting schedule rule is in direct conflict with all of the Referee's previous statements concerning the relation of schedule rules to the Vacation Agreement, some of which statements have been heretofore quoted in this Opinion. We are in accord with the Referee's holding that Illustration (b) is within the meaning and intent of the Vacation Agreement but we do not concur with his conclusion that the Vacation Agreement can be applied when a conflicting schedule rule exists which is applicable to the subject of the controversy.

Our holding in the present case is consistent with and sustained by the previous awards of this Division. In Award 2340, we said:

> "It seems clear therefore, that all rules agreements remain as before the execution of the Vacation Agreement, and that, in the absence of a negotiated change, they are to be enforced according to their terms. No change was ever negotiated with reference to the application of overtime pay as provided in Rule 37 of the Clerks' Agreement, to the Vacation Agreement. No dispute exists, therefore, which arises out of the interpretation or application of any of the provisions of the Vacation Agreement. The matter is properly here for decision under the Clerks' Agreement."

See also Awards 2484. 2537 and 2720.

If and when the Vacation Agreement is made effective by eliminating by negotiation the schedule rules in conflict therewith, the provisions of Article 14 of the Vacation Agreement will also become operative and the procedure therein described with reference to disputes arising under that agreement, will become a condition precedent to a determination of such issues by this Board.

We are obliged to say that the schedule agreement existing between this carrier and the Signalmen's Organization controls the disposition of the claims before us. This finding is not only sustained by the language of the Vacation Agreement itself but it is clearly demonstrated that such was the intent of the parties when the Vacation Agreement was negotiated. The Vacation Agreement not being effective where a conflicting schedule rule exists, it cannot have the effect of depriving this Board of its jurisdiction to determine the claims under such schedule rules. The Board clearly has jurisdiction to determine the claims under applicable schedule rules. When the quoted schedule rules are applied, the position of the Claimant is found to be correct and the claims should be sustained.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the carrier and the employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That an affirmative award is authorized by the controlling agreement.

AWARD

Claims (a), (b), (c), (d), (e), (f), (g) and (h) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 11th day of December, 1945.

DISSENT TO AWARD No. 3022, DOCKET SG-2979

This Award declares its holdings to be "consistent with and sustained by the previous awards of this Division," thereupon in the third from last paragraph of the Opinion quoting from Award No. 2340, notwithstanding that the instant case included circumstances clearly distinguishable from those in Award No. 2340 both by reason of the nature of their occurrences and of the fact that those circumstances were identical to those specifically made subject of an Interpretation of the Vacation Agreement, which Interpretation was by agreement of the parties accepted as binding upon them.

That Interpretation, which was upon Illustration (b) of the "Referee's Answers to Questions Raised under Article 12 of the Vacation Agreement," was directly contrary to the Award here made in respect to the circumstances covered alike here and in Illustration (b), as even the fourth from last paragraph of the Opinion of Board here arbitrarily declares.

In order to show that such declaration is on incorrect determination of that Interpretation of the Vacation Agreement,—a bona fide and the latest agreement between the parties dealing with identical circumstances in the case before us,—the exact provisions thereof are here reviewed:

First, precedent to the issuance by the Referee, Hon. Wayne L. Morse, of the Interpretations of the Vacation Agreement, of which said above Illustration (b) is a part, the parties in accord stipulated:

> "The parties have agreed that your decision upon the issues here submitted shall be final and binding."

There can be no question, therefore, that the decision upon the issue of Illustration (b) represents a final, binding, and the latest agreement between the parties upon the circumstances covered by Illustration (b).

Second, the question presented by Illustration (b) and the decision by the Referee upon the issue it presented are self-revealing, being here quoted:

> "'(b) A shop craft employe on the third shift is allowed a 6 day vacation. It is necessary to fill his position and an employe is transferred from the second shift. The transferred employe claims that schedule rules with respect to changing shifts and doubling over apply to filling vacation vacancies and claims time and one-half for the first shift he works in filling the vacationing employe's position, and time and one-half for the first shift he works upon return to his position. It is the carriers' position that these punitive payments are not required.'
>
> It is the referee's opinion that the carrier's position on this illustration is absolutely sound and within the meaning and intent of the vacation agreement. It is his view that under Article 12 (b) the vacancy created by an employe going on vacation does not constitute such a vacancy as to entitle a relief worker to punitive payments. The referee submits that the employes' position on this illustration is a good example of a strained and highly technical interpretation of existing working rules. He is con-

vinced that it was not the intent of the parties, nor is it reasonable to **assume that they could have intended, that when a carrier grants an employe a vacation and his job is such that it must be filled with a relief worker, an additional cost of overtime pay must be incurred for the first shift."**

The circumstances of changing shifts and the question of time and one-half claims involved in this Award No. 3022 are identical with the circumstance and question above decided and made an agreement between the parties.

It is the decision and consequent agreement between the parties which the majority of the Board in tht instant Opinion in the fourth from last paragraph declares to be conflicting with a schedule rule of a preceding Agreement, and further, in upholding the contrary effect of the earlier schedule rule thus superseded in respect to these circumstances, declares that decision of Referee Morse in the Vacation Agreement case bearing upon these circumstances to be incorrect in its conclusion when there is a schedule rule in conflict with the Vacation Agreement because forsooth some former statements concerning the relation of schedule rules to the Vacation Agreement (not incidentally relating to the particular circumstances of Illustration (b) here again involved) had been made by Referee Morse in respect to his Interpretations upon other phases of the Vacation Agreement.

The declaration of the majority of the Board in the instant case that the decision of Referee Morse in "its conclusion is incorrect when there is a schedule **rule in conflict" can have no effect upon the solemn agreement of the parties to** be bound by the decision of Referee Morse. Though that decision were incorrect as the majority here says it is, it nevertheless became an agreement between the parties by their mutual subscription to that effect, and thus, whether correct or incorrect in the judgment of others, this Board lacks the power to nullify it by the arbitrary expedient of declaring the decision which brought about the agreement to be an incorrect decision.

This Award but emphasizes the error of Award 2340 upon which it relies to sustain its reiterated action here: In Award No. 2340 the majority of the Board had before it a case with circumstances upon which they found it possible to find that no dispute existed which arose out of the interpretation or application of the Vacation Agreement and to hold that the matter was before the Board for decision under the Schedule Agreement. The error there was that the authors of the Award found it necessary to interpret the Vacation Agreement,—a matter reserved by the Agreement to the committee established by it,—and thus by interpreting that which it then lacked authority to interpret, condemned its own action.

In the instant Award, the majority have gone further to declare that an **agreement between the parties, relating to the Vacation Agreement, resulting** from a decision of the mediating Referee which they accepted as an agreement between them, is nullified because now in a review of that Vacation Agreement, they declare its author, whose decisions were accepted as agreements by the parties, rendered an incorrect decision.

Thus, pyramided upon their earlier unwarranted action in setting aside the Vacation Agreement in Award No. 2430, the majority now declare the Vacation Agreement to have been founded on incorrect decision by its author, and, though nonetheless agreed to by the parties, declare again that the Schedule Agreement alone is controlling.

Such non-statutory extension of opinion and award, threatening nullification of agreements made by the parties and previously interpretated and agreed to by them upon identical circumstances involved in the case before us, cannot be other than expression of opinion that is not sound and an Award that is unwarranted and void.

(s) C. C. Cook
(s) R. H. Allison
(s) A. H. Jones
(s) R. F. Ray
(s) C. P. Dugan