

Award No. 3756

Docket No. 3436

2-DW&P-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. 148, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O. (Carmen)**

DULUTH, WINNIPEG & PACIFIC RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

- 1 — That under the current agreement the carrier improperly compensated Carman Donald Isakson, hereafter referred to as claimant, on February 3, 4, 5, 6, 7, 10, 11, 12, 13 and 14th, 1958, when working in the capacity of Assistant Car Foreman.
- 2 — That accordingly the carrier be ordered to compensate claimant the difference in wages of a regular Assistant Car Foreman and the wages he did receive.

EMPLOYEES' STATEMENT OF FACTS: Carman Donald Isakson, hereinafter referred to as the claimant, is regularly employed by the Duluth, Winnipeg and Pacific Railway, hereinafter referred to as the carrier, as a carman at Duluth, Minnesota. The claimant is regularly assigned to the repair track as an air man with a work week of Monday through Friday 7:00 A. M. to 3:30 P. M., with Saturday and Sunday as rest days.

On February 3, 1958, Assistant Car Foreman R. Georts began two weeks vacation, resuming his duties as foreman on February 17, 1958.

On Monday, February 3, 1958, the carrier removed the claimant from his regular assignment of air man and assigned him to fill the position of Assistant Car Foreman R. Georts for the duration of the latter's vacation.

The carrier compensated the claimant while filling the position of Assistant Car Foreman Georts at the rate of \$475.00 per month. Later the carrier advised the claimant that he should have been compensated at the rate of \$503.00 per month and additionally compensated him in the amount of the difference between the rate paid and the \$503.00 rate.

Assistant Car Foreman R. Georts' monthly rate of pay is \$543.00 per month.

AWARD

Claim of employes in respect to the duties assigned to Jasper Fletcher, not being such as contemplated in Rule 27, is sustained.

Claim of employes for foreman's compensation cannot be passed upon by this Division. The rules of the current agreement do not apply in this instance."

CONCLUSION:

In view of the circumstances outlined the carrier contends that there is no justification for the employe's claim.

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 waived right of appearance at hearing thereon.

Claimant Isakson was used to fill the position of Assistant Car Foreman Georts during the latter's vacation, and was paid at a probationary rate rather than at the latter's regular pay rate.

Rule 35 of the Agreement provides:

"Should an employe undertake temporarily to fill the place of a shop foreman he will be paid the rate * * * applying to the position".

The Carrier's position is that Georts' job is supervisory and therefore is not covered by the Agreement; and that:

In making appointments to such positions, either permanent or relief, it is our policy and practice to pay the appointee on a graduated scale of probationary rates until he gains sufficient experience to satisfactorily perform the duties of the position, at which time he is paid at the standard rate of the position. This practice was followed in the instant case."

* * * * *

We have not violated this rule, as either the probationary or the standard rate may be described as the rate applying to the Assistant Foreman's position."

The argument might be valid if Georts had been filling the assistant foreman's position on a probationary basis. But as his position was not probationary and he was not receiving the probationary rate, the latter is not "the rate * * * applying to the position". Consequently Rule 35 was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 16th day of June, 1961.