

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Fred L. Fox, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILROAD SIGNALMEN OF
AMERICA**

TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS

STATEMENT OF CLAIM: Claim that the classification of Leading Maintainer at Biddle and Mullanphy Street interlocking plants be retained and the continuation of Leading Maintainers' rate of pay from August 21, 1942.

JOINT STATEMENT OF FACTS: Leading signal maintainer positions are in existence at all interlocking plants where forces are assigned on more than one shift or more than one signal maintainer is assigned on the same shift. Where there is only one signal maintainer on a shift, the first shift man is held responsible for all work performed by second and third shift signal maintainers and accounts for all materials used and is classified as a leading signal maintainer.

The classification rule relating to leading signal maintainers reads as follows:

"A signal maintainer in charge of a section or plant working with and supervising the work of one or more signal maintainers or signalmen shall be classified as leading signal maintainer."

On October 29, 1937, B. L. Short was awarded the position of leading signal maintainer at the Biddle and Mullanphy Street plants. At that time there was a signal maintainer on the second shift. On April 1, 1938, the second shift signal maintainer position was abolished. In a bulletin issued on April 15, 1938, there was a paragraph reading:

"The position of leading signal maintainer at Biddle and Mullanphy Streets was automatically abolished by Bulletin of April 1, 1938. Mr. B. Short should promptly exercise his seniority rights."

Mr. Short filed a bid on April 18 for the first shift position of signal maintainer and it was awarded to him.

Sometime after April 15, 1938, the question of continuing the classification of leading signal maintainer was handled in conference with former General Superintendent J. A. Mathewson, of which no record was made. The leading signal maintainer rate was continued until August 21, 1942, when Mr. Short bid off the job.

POSITION OF EMPLOYEES: There is an agreement between the parties, effective August 1, 1936. Section 3, Article VIII of that agreement reads as follows:

to abolish an established position where the principle duties and major responsibilities remain and assign those duties and responsibilities to lower rated positions.

The Brotherhood holds that this Division should sustain this claim.

POSITION OF CARRIER: As indicated in the Joint Statement of Facts, the first shift signal maintainer at the Biddle and Mullanphy Street plants was classified and paid as a leading signal maintainer as long as there were other signal maintainers assigned to work with him or under his jurisdiction. As also indicated in the Joint Statement of Facts, the classification of a first shift maintainer as a leading maintainer, where there are maintainers employed on two or more shifts, is because he assigns and is held responsible for the work performed by others.

Under the classification rules of the agreement, a man is either a signal maintainer or a leading signal maintainer, the latter classification depending upon whether or not, to use the language of the rule, "he is in charge of a section or plant working with or supervising the work of one or more signal maintainers." Unless he has that responsibility, there is no warrant for classifying him as a leading signal maintainer or paying him the higher rate applicable to that classification.

It will be noted from the Joint Statement of Facts that the position of leading maintainer held by the claimant was abolished when the last signal maintainer position on other shifts was discontinued, but that, as a result of an unconfirmed conference with former General Superintendent Mathewson, the leading maintainer rate was continued until August 21, 1942, when the incumbent bid off the job. It is the recollection of the Signal Engineer that Mr. Mathewson agreed to continue the leading maintainer's rate so long as the incumbent held the position. Be that as it may, we contend that the mere fact that the rate and classification was permitted to continue does not obligate us to continue it indefinitely when it is agreed by both parties to the dispute that the incumbent of the position is not, again using the language of the classification rule, "in charge of a section or plant working with and supervising the work of one or more signal maintainers." It is also agreed that the incumbent is now, again using the language of the classification rule, "assigned to perform work generally recognized as signal work" and as a consequence should only "be classified as a signal maintainer." In other words, it is the position of the carrier that the company cannot be expected to classify or pay the men covered by the Signalmen's agreement except to the extent indicated in the classification rules of that agreement.

The argument of the organization that Section 3 of Article 8, to the effect that "established jobs shall not be discontinued and new ones created under a different title covering relatively the same class of work for the purpose of reducing rates of pay or evading the application of rules" is applicable to situations of this kind is untenable. That section has no relation whatever to the proper rating of positions in accordance with the classification rules, but is intended to prevent the payment of less than the rates applicable for any class of work according to the classification rules. That section does not abrogate or set aside the classification rules; it simply augments them.

OPINION OF BOARD: Biddle and Mullanphy interlocking plants, located in St. Louis, about one mile apart, were put in operation about the year 1904, with a leading signal maintainer on the first shift at each plant, and a signal maintainer on the second and third shifts at each plant, making a total of six employees on the three shifts. It is stated that, "Forces were reduced from time to time and the following bulletin was issued on February 18, 1933." The third paragraph of this bulletin reads: "The position of signal maintainer, Biddle Plant, first shift, is abolished," the effect of which, as we understand, was to make vacant the position of leading signal maintainer at

the Biddle Plant, and to place the responsibility for leading signal maintainer's work at both plants on the leading signal maintainer at the Mullanphy Plant. In paragraph four of the bulletin it is stated: "The positions of signal maintainer, third shift at Biddle and Mullanphy St. and North Market St. will be combined and handled by one man between the hours of 12:30 A. M. and 6:30 A. M. * * *." The effect of the two paragraphs of the bulletin was to abolish the position of one leading signal maintainer (Biddle St.), and two signal maintainers (third shift). The second shift seems to have been retained, and its starting time was fixed at 4:30 P. M. Apparently the time of the leading signal maintainer started at 6:30 A. M. and ended at 2:30 P. M., leaving a gap of two hours between that time and 4:30 P. M., when the second shift man came on the job. Just when the second shift job was abolished is not clear; probably it was done April 1, 1938. But it must have been abolished, because the carrier's position is based on the claim that no signal maintainers were working under the man in charge of the first shift at the Mullanphy Plant. On November 13, 1942, the following bulletin was issued:

"Hereafter, third shift maintainers will go to Biddle and Mullanphy Street towers only in emergency and or when necessary to answer failure calls which will include failures on crossing gate lights."

It is contended by the employe that the purpose of this bulletin was to lay the foundation for a discontinuance of the leading signal maintainer position at Biddle and Mullanphy towers, or the rate of pay attached thereto, but, in fact, the position of leading signal maintainer at those points seems to have been abolished on August 21, 1942, and the claim is asked to relate to that date.

It is the employe's contention that the bulletin of November 13, 1942, has not substantially changed the situation, as to the work required at the Mullanphy plant, as it has existed since 1938. It is said that men from other shifts still go to Biddle and Mullanphy towers, and are under the supervision of the signal maintainer at that point, which he claims entitles him to be classified and paid as a leading signal maintainer. It is admitted that to become a leading signal maintainer the requirements of the rule that, "A signal maintainer in charge of a section or plant working with and supervising the work of one or more signal maintainers or signalmen shall be classified as leading signal maintainer," must be met. The question is, does the work done by the signal maintainer at Biddle and Mullanphy towers come within this definition?

The case has another angle: On October 29, 1937, one B. L. Short was awarded the position of leading signal maintainer at the Biddle and Mullanphy plants, at which time there was a signal maintainer on the second shift, and, therefore, there was no question of Short's right to the rating given him. On April 1, 1938, the second shift signal maintainer's position was abolished, and on April 15, 1938, a bulletin was issued which contained the following: "The position of leading signal maintainer at Biddle and Mullanphy Streets was automatically abolished by bulletin of April 1, 1938. Mr. B. Short should promptly exercise his seniority rights." It is assumed that it was the carrier's belief that it was the abolition of the second shift signal maintainer's position on April 1 which automatically abolished the position then held by Short.

This position of the carrier was not accepted by Short. While he bid for and was awarded a first shift position as a signal maintainer, presumably at the same plant, he contended that he was entitled to be classified and paid as a leading signal maintainer, and his claim seems to have been promptly handled in an informal manner before the then General Superintendent Mathewson. No record exists as to what took place at the conference so held. One thing is certain: The outcome of the conference was that Short was

restored to his position of a leading signal maintainer, and was paid as such until August 21, 1942, when he gave up his position and bid for another job. When this occurred, the carrier promptly attempted to put into effect its bulletin of April 15, 1938, and out of this action this dispute arose.

On this dispute the position of the carrier is, (1) that under Section 3, Article I of the agreement, quoted above, the occupant of the signal maintainer position at Biddle and Mullanphy plants cannot qualify as a leading signal maintainer, for the reason that he "does not work with and supervise the work of one or more signal maintainers or signalmen;" and (2) that the action of the General Superintendent, in continuing Short as a leading signal maintainer in 1938, and allowing this arrangement to stand for more than four years, until August 21, 1942, when Short gave up his job, was intended to continue for such time only as Short held the position; and that when he gave it up, there was nothing in the way of the carrier applying the agreement rules to the situation, and that the bulletin of April 15, 1938, conformed to said rules.

The position of the employe is that while Section 3 of Article I of the agreement applies, it is not true that the occupant of the position of signal maintainer at Biddle and Mullanphy plants does not work with and supervise the work of other signal maintainers and signalmen. Specifically, he says that since 1933, and even under the bulletin of November 13, 1942, men from other shifts, or from other points, do work at Biddle and Mullanphy plants. That said bulletin, while providing that third shift maintainers could go to these plants only in cases of emergency, or when necessary to answer failure calls, including crossing gate lights, yet the bulletin itself contemplates that signal maintainers would, under certain conditions, go to these plants, and would necessarily work with and be supervised by the signal maintainer in charge at those plants. He also says that the bulletin in question has made no substantial change from the situation at these two plants, as it existed, when, in 1938, and for more than four years thereafter, the signal maintainer in charge of the first shift was rated as a leading signal maintainer. Further that the claim that the arrangement resulting from the conference with General Superintendent Mathewson, in 1938, was intended to continue so long only as the then occupant held the job has not been, and cannot be sustained, and that the contrary is true.

The Board is of the opinion that the employe has the best of the argument. As we see the matter, there has never been a time when, under well defined conditions, signal maintainers and signalmen from shifts other than the first shift at Biddle and Mullanphy Plants, or from other points, have not been required to, and have actually done work at these two plants. When they so worked, the responsibility of supervision rested on the first shift signal maintainer at those plants. Therefore, we cannot say, that, under these conditions, the application of Section 3 of Article I, bars the claim of the employe to be classified and paid as a leading signal maintainer. We think it was this interpretation of the situation, and the rule, which prompted General Superintendent Mathewson, in 1938, to take the line of action he then followed. In our opinion the bulletin of November 13, 1942, did not materially change the situation as it existed in 1938, and thereafter. We cannot say, from the record before us, that what was done in 1938 was intended to be temporary in its application. It so intended, there would most certainly have been some letter or memorandum evidencing that intent. At most, the recollection of the parties who attended the 1938 conference differ, and that difference affords no basis for any holding or inference that there was any condition or limitation attached to what was there done. We are of the opinion that if the carrier would reduce the position of the first shift signal maintainer at the Biddle and Mullanphy plant below that of a leading signal maintainer, it must divorce that position from any requirement that its occupant work with or supervise the work of signal maintainers or signalmen from other shifts, or from other points.

It follows that, in the circumstances now existing, the first shift signal maintainer at Biddle and Mullanphy Plants should be classified as a leading signal maintainer, and the claim will 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 employe involved in this dispute are respectively carrier and employe 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 in the circumstances now existing, the occupant of the position of first shift signal maintainer at Biddle and Mullanphy Plants, be classified and paid as a leading signal maintainer.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 29th day of June, 1943.