

Award No. 11476

Docket No. SG-10958

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Preston J. Moore, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

**THE BALTIMORE AND OHIO CHICAGO TERMINAL
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the Brotherhood of Railroad Signalmen on the Baltimore and Ohio Chicago Terminal Railroad Company that Mr. J. P. Geist, regular assigned Assistant Signal Maintainer at Forest Hill, be paid the top Assistant's rate of \$2.332, commencing January 21, 1958, and continuing so long as he is required to work in place of Mr. O. C. Kotowske, regular assigned Assistant Signal Maintainer at 49th Street.

EMPLOYEES' STATEMENT OF FACTS: John Geist is a regular assigned Assistant Signal Maintainer with assigned headquarters at Forest Hill. Assistant Signal Maintainer Geist's rate of pay on his regular assigned position at Forest Hill was 2.23 per hour.

On January 21, 1958, Assistant Signal Maintainer Geist was directed by the Carrier to temporarily fill the position of Mr. O. Kotowske, Assistant Signal Maintainer at 49th Street, who was off duty because of illness. Assistant Signal Maintainer Kotowske's rate of pay on the position at 49th Street was \$2.332 per hour.

Signal Maintainer P. Julien, under whose direction Mr. Geist was instructed to work at 49th Street, initially submitted time sheets for Mr. Geist showing his lower Assistant rate of pay but subsequently changed the time sheets to show the higher rate of pay of Mr. Kotowske, \$2.332 per hour.

The higher rate of pay was denied Mr. Geist on instructions of the General Auditor, as was travel time from his regular assigned headquarters at Forest Hill to 49th Street, the headquarters of the position he was directed to fill. Upon being denied the higher rate of pay and travel time, Mr. Geist turned the matter over to General Chairman C. L. Siedschlag, who discussed the claim with Division Engineer J. R. Rymer on March 7, 1958. Following this conference on March 7, 1958, it is our understanding that Mr. Geist was allowed travel time but continued to be denied the higher rate of pay of Mr. Kotowske's position.

Unable to satisfactorily dispose of the dispute, General Chairman Siedschlag wrote a joint letter to Mr. T. S. Woods, Assistant Manager Labor Re-

1953. Rule 6(e) expressly modifies "assistants." In point of time Rule 6(e), and its special character, follows by many years the incorporation of Rule 20 the "Preservation of Rates" rule into the contract. Rule 6(e) represents the most recent evidence of the intent of the parties.

In Award 16591 (First Division) it was held "By entry into the agreement of January 10, 1941 the Memorandum of Agreement of April 14, 1938, became subordinate, and to the extent that the two were in conflict, if in fact they were in conflict, the one of January 10, 1941 became controlling."

Carrier's Summary:

Rule 6(e) of the contract is in every sense a special rule. Observe that Rule 6(e) directly modifies "assistant" under Rule 6. By virtue of its recent incorporation into the working agreement and by virtue of its special character, Rule 6(e) takes precedence over any other general rule appearing in the working contract. It has been repeatedly held before the Adjustment Board that special rules supersede general rules. In this case Rule 6(e) supersedes Rule 20 under circumstances and conditions where Rule 6(e) has application.

For example, in Award 16429, (First Division) it was ruled

"Here we have an apparent conflict of a special rule with a general rule on the same subject. This Division of the Adjustment Board and many of the Referees usually have accepted the general principle of construction that a special rule will prevail over a general rule on the same subject."

In Award 17751 (First Division) it was ruled

"It is a recognized principle of construction that a specific Article * * * prevails when in conflict with a general Article. * * *"

Applying these principles to the instant case it follows that, contrary to the Committee's assertion, Rule 20 does not support this claim. The claimant, Mr. Geist, should be paid (as he has already been paid) as provided in Rule 6(e), on the basis of his previous experience in railroad signal work so long as he fills any assistant's position. The claim for the top assistant's rate is not justified; it does not find support in the rules of the working agreement.

The Carrier petitions this Division that it act to hold this claim as being without merit and that it deny the claim.

OPINION OF BOARD: The Claimant was an assistant signal maintainer. He entered his fourth period of training on January 21, 1958 and was directed to fill a temporary vacancy. He was not paid the rate of the temporary vacancy but the lower rate of his own position.

The Petitioner contends that under Rule 20 he is entitled to the rate of the temporary vacancy.

"RULE 20

"When an employe is required to fill the place of another employe receiving a higher rate of pay he will receive the higher rate;

but if required to fill temporarily the place of another employe receiving a lower rate, his rate will not be changed."

The Carrier urges that Rule 20 is in conflict with Rule 6 and that Rule 6 is controlling.

It is a basic principle of contracts that if possible, two separate clauses of a contract should be interpreted so as not to be in conflict with each other. In this case, it is certainly possible and plausible to do so. The Board finds that Rule 6 established the rate of pay of an assistant.

We find that Rule 20 is not in conflict with Rule 6 but is further clarification where an employe is required to fill the place of another.

For the foregoing reason, we find the Agreement was violated.

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 the Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 6th day of June 1963.