NATIONAL RAILROAD ADJUSTMENT BOARD
Third Division

Arthur M. Millard, Referee

PARTIES TO DISPUTE:

THE BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE RAILWAY COMPANY

STATEMENT OF CLAIM.—

"Claim of Christ Bolstad, crossing flagman at Neenah, that he be paid the difference between what he received as crossing flagman and what he should have received as lamp tender for hours he was required to devote to tending lamps in Neenah yard since August, 1933."

STATEMENT OF FACTS.—The following statement of facts was jointly certified by the parties:

"Christ Bolstad is assigned as crossing flagman at Lake Street crossing, Neenah, Wisconsin, at rate of pay as provided for in the schedule of $58.75 per month.

"Since August 1st, 1933, Crossing Flagman Christ Bolstad, while performing his duties as crossing flagman has taken care of switch lamps in the proximity of the Lake Street crossing on each Wednesday from 10:00 a. m. to 11:30 a. m. and each Saturday from 10:00 to 11:00 a. m. and from 1:00 p. m. to 1:30 p. m., approximating 13½ hours per month. Other switch lamps at Neenah are taken care of by section laborers whose rate of pay is 41 cents per hour."

An agreement between the parties bearing effective date of November 1, 1934 was placed in evidence.

POSITION OF EMPLOYES.—The contention of the employes were stated as follows:

"Christ Bolstad has been for several years, and is, at the present time, assigned as a crossing flagman on the Lake Street crossing, Neenah, Wis., at a compensation of $58.75 per calendar month. This compensation was fixed with the thought in mind that it would cover a nonmanual labor position, or in other words, to a position to which an incapacitated man unfit for regular manual labor may be assigned.

"Prior to August 3, 1933, switch lamps in the proximity of the Lake Street crossing were taken care of and handled by a section laborer at the rate of 41¢ per hour. Effective August 3, 1933, this section laborer was relieved of the duties of taking care of the switch lamps, and was required to devote the time he spent on the switch lamps to other services in Neenah yards—services that commanded a rate of 41¢ per hour. When the section laborer was relieved of the duties of taking care of the switch lamps, crossing flagman Bolstad was assigned to this work and required to take care of the switch lamps in the proximity of the Lake Street crossing, in addition to his services as crossing flagman.

"As indicated by the Joint Statement of Facts, Bolstad worked approximately four hours per week or thirteen and one-half hours each month, taking care of the switch lamps, a service that commands a rate of 41¢ per hour, whereas his wage as a crossing flagman, figured on an hourly basis, amounts to 24¢ per hour, or 17¢ per hour less than the rate appli-

The carrier further argued that though the circumstances surrounding the crossing flagman's job at Lake Street were such that continuous service as a crossing flagman is not required, that fact did not deprive the carrier of the right to use him during his idle time in other service without the payment of additional compensation for such limited service performed inside his regularly assigned hours, particularly in this case in which such a limited amount of his time was required in taking care of switch lamps near his crossing, and in view of the clear-cut provisions of the composite service rule (Rule 22) quoted in the position of the carrier, when such provisions are not violated.

The carrier also argued from the Mediation Agreement of January 19, 1933, submitting the entire Mediation Agreement covering a total of seventeen cases including the two in GC–932 and GC–933, previously cited by the employes. Two other cases therefrom GC–971 and GC–937 bearing relation to the instant case are quoted:

> "GC–971 Case No. 11.
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> "QUESTION * * * Claim of the employes that the Railway Company is not within its rights in contracting the work of taking care of switch lamps and cleaning cars in the St. Paul yard.
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> "SETTLEMENT * * * That part of the Railway Company's letter of July 24, 1922, addressed to the General Chairman of the Brotherhood of Maintenance of Way Employees, File 21418, reading as follows: 'It is not the intention of the Company to let out any contract work which has been customarily done by Maintenance of Way Department employes', is herewith reaffirmed and shall be observed.
>
> "In consideration of the above, this case is withdrawn. It is understood, however, that the position of the employes is not prejudiced and that the case will again be considered if the work in question develops into a full-time position.
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> "GC–937 Case No. 16.
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> "QUESTION * * * Claim of the employes that the Railway Company is not within its rights in contracting the work of taking care of switch lamps at Rhinelander, Wisconsin, and that the employes who lost employment through this contracting work be reimbursed for all time lost during this period.
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> "SETTLEMENT * * * That part of the Railway Company's letter of July 24, 1922, addressed to the General Chairman of the Brotherhood of Maintenance of Way Employes, File 21418, reading as follows: * * * 'It is not the intention of the Company to let out any contract work which has been customarily done by Maintenance of Way Department employees,' is herewith reaffirmed and shall be observed.
>
> "In consideration of the above, this case is withdrawn. It is understood, however, that the position of the employes is not prejudiced and that the case will again be considered if the work in question develops into a full-time position."

OPINION OF THE BOARD.—The contention in this case is not that there has been any direct violation of any particular rule or rules of the agreement, but rather that there has not been compliance with the intent of the agreement as it relates to the positions of crossing watchmen or flagmen and the class of work contemplated by such positions. Rule 11 of the agreement between the railroad company and the Brotherhood of Maintenance of Way Employes, which has been quoted and discussed in this case, specifies the manner in which the positions of crossing watchmen or flagmen are established. Rule 22 of the same agreement covers conditions where work of more than one class is performed by the same employe on the same day. This rule (22) reads:

> "An employee working on more than one class of work on any day will be allowed the rate applicable to the character of work performed during four or more hours of that day.
>
> "When temporarily assigned by the proper officer to lower rated positions, his rate of pay will not be reduced."

Considering this rule, and notwithstanding the several cases that have been cited for and against this claim, there is a basis for the assumption that the proper interpretation of the first paragraph of that rule refers to temporary positions and positions for which a daily rate is paid and not to established

positions paying a monthly rate. That this interpretation is justified is amply evidenced in the second paragraph in which temporary positions are specifically designated as is the fact that where temporary assignments are made to lower rated positions the rate of pay will not be reduced. In the present case the position of this claimant was not a temporary one, nor one on which a daily rate had been established, but rather it was an established position paying a monthly rate and to which additional duties paying a higher rate of pay had been added as a regular assignment. In the application of the interpretation of the intent of these rules, and particularly of rule 22, the fact remains that regardless of how much or how little time was required in the fulfillment of other assigned duties the position of this claimant was that of a crossing watchman or flagman, and any additional duties which in their proper application and classification would require a higher rate of pay should be compensated accordingly.

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 carrier has not complied with the intent of the agreement in the handling of instant case.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: H. A. JOHNSON
Secretary

Dated at Chicago, Illinois this 15th day of April, 1937.