

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Ernest M. Tipton, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILROAD SIGNALMEN OF
AMERICA**

**CHICAGO, BURLINGTON & QUINCY RAILROAD
COMPANY**

STATEMENT OF CLAIM: "That W. F. Aldridge be paid the difference between the rate he received (59¢ per hour) and the rate of 73¢ per hour for the period of time he was filling the place of an assistant signal maintainer whose regular rate was 73¢ per hour, as provided for by the provisions of Rule 25 of the agreement, between the management of the Chicago, Burlington and Quincy Railroad Company and the Brotherhood of Railroad Signalmen of America, effective February 1, 1938."

EMPLOYEES' STATEMENT OF FACTS: "On August 1, 1939, Mr. W. F. Aldridge, signal helper, was assigned to take the place of an assistant maintainer on the Kansas City Terminal Division of the Chicago, Burlington and Quincy Railroad Company, the assistant maintainer whom he relieved having been assigned to relieve a signal maintainer at another point on the railroad.

"Aldridge filled the assignment as above stated August 1 to 15 inclusive, except on the 6th and 13th which were Sundays and upon which he performed no service. While filling the position of assistant maintainer, Aldridge was paid at the rate of 59¢ per hour while the rate of the assistant maintainer whom he relieved was 73¢ per hour.

"The rate received by Aldridge while filling the place of the other employe was not in accordance with the provisions of the agreement. Rule 25 of the agreement provides that when an employe is assigned to fill the place of another employe receiving a higher rate, he will receive the higher rate. Had the provisions of Rule 25 been complied with, Aldridge would have received the rate of 73¢ per hour, eight hours per day, August 1 to 15 inclusive (except for the two Sundays, August 6 and 13).

"Aldridge was not regularly assigned as an assistant maintainer and because of that fact accumulated no seniority rights while filling this temporary vacancy."

POSITION OF EMPLOYEES: "It is the position of the Brotherhood that the management disregarded the provisions of Rule 25 of the agreement when it refused to pay Aldridge, who was classified as a helper, the rate of the employe whose position he was required to fill during the thirteen days involved in this dispute.

or for other reasons does not receive the rate of the employes whom he relieves, irrespective of whether it be a higher or lower rate. In other words, the provisions of Rules 33 and 63 are controlling in every instance where an assistant is relieved by other than an employe in a higher classification, such as a signalman or signal maintainer.

"In conclusion, it is requested that the Board take cognizance of the fact that the instant claim was not declined by the Management; therefore, the Management does not believe that reasonable effort was made by the Committee to settle the dispute on the property, which is amply evidenced by the refusal of the Committee to reply to the Management's communication dated November 10, 1939 (Exhibit No. 2 attached herewith). However, the case is now before this Board, even though in our opinion improperly presented, and the Management feels strongly that the outcome hinges upon the written rules cited herein, which preclude an affirmative award."

There is in existence an agreement between the parties bearing effective date of February 1, 1938.

OPINION OF BOARD: The claimant, W. F. Aldridge, with established seniority and rate of pay as Signal Helper was temporarily assigned by the Management to fill the place of Assistant Signal Maintainer, Jovo Mattic, whose rate of pay by the progressive rates of pay under Rule 63 applying to Assistant Maintainers, was 73 cents per hour.

Rule 25 states:

"When an employe is required to fill the place of another employe receiving a higher rate of pay, he shall receive the higher rate. * * *"

Therefore, the carrier violated the provisions of Rule 25, when it declined to pay the claimant the same rate of pay that Jovo Mattic, the employe who was permanently assigned to this position, and his claim is, therefore, sustained.

It was contended that since this Division is here confronted with the promulgation of a foundation award, the Opinion should be broad enough to serve as a complete interpretation of the inter-related applications of Rules 25 and 63 and likewise as to Rule 33. This the Board declines to do, because it is not necessary to do so for a decision in this award; to interpret the above rules to facts that do not exist would be mere dictum.

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 the Carrier violated Rule 25.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 31st day of October, 1940.