Award No. 2738
Docket No. SG-2716

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

THE BALTIMORE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: Claim that John G. McBee be paid the difference between the rate he received (74¢ per hour) and the rate of 88¢ per hour while filling a temporary assignment as Assistant Signal Maintainer on District No. 11, headquarters Terra Alta, W. Va., May 13, 1942 to June 23, 1942, inclusive.

JOINT STATEMENT OF FACTS: W. I. Ridings, the regularly assigned Assistant Maintainer on District No. 11 whose regular rate is 88¢ per hour, reported off sick. John G. McBee, a furloughed Signal Department employe, was recalled, and upon reporting was assigned to fill the temporary vacancy created by Mr. Ridings' absence on District No. 11.

Due to McBee being furloughed in less than six (6) months after his promotion to an assistant on July 1, 1937, he had not completed the first step of the step rate schedule (Rule 52) at the time he was recalled, consequently his rate was 64¢ per hour as provided for under agreement rules at the time he was furloughed (now 74¢ per hour because of adjustment in wage rates effective December 1, 1941), which rate he received when required to temporarily fill the place of another employe receiving a higher rate of pay.

McBee was not assigned to this position by bulletin.

POSITION OF EMPLOYES: As indicated in the joint statement of facts claimant McBee furloughed Signal Department Employe was recalled to service and assigned by the carrier to temporarily fill the position of Assistant Signal Maintainer W. I. Ridings who had reported off sick. Ridings' rate of pay was 88 cents per hour, but McBee was paid only 74 cents per hour.

It is the contention of the employes that the rate of pay received by McBee while required to fill the place of another employe receiving a higher rate was not in accord with the provisions of Rule 26 of the current Signalmen's Agreement reading as follows:

> "Rule 26.—When an employe is required to fill the place of another employe receiving a higher rate of pay he shall 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 argues that McBee is not entitled to receive the rate of the position (88 cents per hour) he was temporarily assigned to fill because he had not completed his four years service under the provisions of Rule 52 reading as follows:

the same occupational classification receiving such graded rates who is on vacation, **the rate of the relieving employe will be paid.**" (Emphasis supplied.)

Rule 4, above quoted, defines an Assistant Maintainer as an employe in training for the position of Signalman or Signal Maintainer, etc., and Rule 51 sets up rates of pay for this training period of four years in six month steps. It would appear if the claim in this case is sustained it would destroy the intent of Rules 4, 51 and 52; for instance, let us assume an Assistant Maintainer, after serving 3½ years as an Assistant Maintainer (rate 84¢ during period covered by this claim) leaves the service for any reason and the position is advertised and bid in by another Assistant Maintainer who is in his first six-months period of training (rate 74¢). Would he be entitled to the 84¢ rate regardless of his training and experience, and what rate would he be entitled to when he had completed his first six months? Two cents per hour increase, or would he continue at the 84¢ rate until he had acquired 3½ years' experience, or would he receive an adjustment of 2¢ per hour based on the 84¢ rate after filling the position of the 84¢ Assistant Maintainer six months? If the latter, then he would receive the rate provided for an Assistant Maintainer for the second six-months of the fourth year period, after he had worked as an Assistant Maintainer considerably less than four years.

The Carrier contends the claim of the committee in the instant case is in direct confliction with Rule 52, above quoted, and that McBee was properly paid during the period involved in this dispute.

OPINION OF BOARD: Claimant, a furloughed Signal Department employe, rated, by reason of his tenure, at 74¢ per hour, was temporarily assigned as Assistant Signal Maintainer from May 13 to June 23, 1942, inclusive, while the regular incumbent, rated at 88¢ per hour, was absent on account of illness. The claim is for the difference in said rates.

The petitioner relies upon Rule 26 of the revised Agreement of August 1, 1939, which guarantees to an employe "required to fill" the place of another employe the higher rate of pay; while the carrier leans upon Rule 52 which provides that employes "promoted" to the position of Assistant Signal Maintainer in accordance with Rule 4 shall be paid the specific rate established by Rule 51, with certain increases based upon length of service.

The above rules deal with entirely different subject-matters, and they are not in conflict. An employe called upon to fill a vacancy caused by the absence or incapacity of the regular holder thereof may well be regarded as having been "required to fill" that position, but it certainly would not be said that he was "promoted" thereto. This must be true, inasmuch as Rule 45 provides that promotion will be based upon ability, merit and seniority, while Rule 48 directs that temporary vacancies of less than 30 days' duration need not be bulletined. Had the position here involved been regularly assigned to the claimant by bulletin, he would only have been entitled to the rate of pay warranted by his own status.

The contentions here made by the carrier are the same as those advanced in opposition to the claim in Docket No. SG-1196, which were rejected by this Board by Award 1219. On the authority of that precedent this claim must likewise 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 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 violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 7th day of December, 1944.