

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

**THE NEW YORK, NEW HAVEN & HARTFORD RAILROAD
COMPANY**

STATEMENT OF CLAIM: Claim that Signal Maintainer Francis J. Brissenden be paid the difference between \$1.045 and \$1.145 per hour for his services performed as Assistant Signal Maintainer from March 23, 1947, to April 12, 1947, inclusive, excluding regular assigned days off duty on Mondays.

JOINT STATEMENT OF FACTS: Mr. F. J. Brissenden with seniority date as Assistant Signal Maintainer of February 11, 1946, was promoted to the class of Signal Maintainer on August 25, 1946. He was assigned to a position of second trick Signal Maintainer at Signal Station No. 237, Boston Division, and continued to work this assignment until March 22, 1947, on which date he was displaced by a senior employe. On March 23, 1947, Mr. Brissenden returned to a position of Assistant Signal Maintainer and worked as an Assistant to April 12, 1947, inclusive, a total of 18 working days. For this service of 18 days Mr. Brissenden was paid at the rate of \$1.045 per hour.

There is an Agreement in effect between the parties to this dispute with effective date of December 26, 1943, which should be considered as a part of the record in this dispute.

POSITION OF EMPLOYEES: The Brotherhood contends that for the services rendered by the claimant as an Assistant Signal Maintainer between March 22 and April 12, 1947 he should have been compensated at the top rate for an assistant, namely \$1.14½ per hour, (the rate in effect at that time) instead of \$1.04½ per hour as was actually paid him.

It is the position of the Brotherhood that inasmuch as Brissenden had spent more than the required three months qualifying period in the Signal Maintainers class he proved his ability and was qualified as a signal maintainer. Therefore, when he was required, account force reduction, to exercise seniority and reduce himself to an assistant he is entitled to the top assistants' rate as he had proven his ability as a mechanic and merits compensation as a top rate assistant because of his proven ability as a mechanic.

The organization also contends that there is no mandatory provision in the agreement which requires an assistant to work the full training period of four years, as such, before he is entitled to the highest assistants rate. We contend that when an assistant has once qualified as a mechanic he should not be required to accept a rate less than the highest assistants rate. This principle is well supported in paragraph (b) of Rule 5 which reads:

Inquiry develops that with some few exceptions the procedure herein followed is the customary practice on other Eastern Railroads under similar circumstances.

The carrier respectfully asks the Board to find that the payment at rate of \$1.045 per hour for the period in question constitutes proper application of Rule No. 56 of the Agreement and that the claim should be denied.

Exhibits not reproduced.

OPINION OF BOARD: Claimant, with seniority date as Assistant Signal Maintainer of February 11, 1946, was promoted to Signal Maintainer on Aug. 25, 1946. He continued to fill the position until he was displaced by a senior employe on March 23, 1947. He thereupon returned to a position as Assistant Signal Maintainer which he held until April 12, 1947, when he again returned to the position of Signal Maintainer. During the 18-day period from March 23, 1947, to April 12, 1947, during which he worked as an Assistant Signal Maintainer, he was paid at the rate of \$1.045 per hour. He claims it should have been \$1.145 per hour.

The rate of pay for Assistant Signal Maintainer is increased each six months of service as such. The rate of \$1.045 per hour paid the Claimant is that for the first six months of the second year's service. Claimant contends, however, that since he had fully qualified as a Signal Maintainer, he was entitled to the highest Assistant Signal Maintainer's rate when he was obliged to return to that work because of displacement by a senior employe.

The following sections of Rule 5, current Agreement, control the result:

"(b) Assistant signalmen or assistant signal maintainers on a seniority district shall be promoted in the order of their seniority to signalmen or signal maintainers if a position as such as open and they have qualified to perform signalman's or signal maintainer's work in less than four years. If a man so promoted fails to meet the requirements of the position within three months, he will be restored to position of assistant signalman or assistant signal maintainer to which he is entitled where he may secure the necessary training and experience to complete his apprenticeship.

(c) At the expiration of four years' service as assistant signalman or assistant signal maintainer, an employe will be promoted to a position of signalman or signal maintainer if a vacancy or new position is open for which he is qualified. If no position is open, such assistant will continue at the highest assistant's rate of pay until it is possible to promote him to a position of signalman or signal maintainer. If there are two or more assistants on a seniority district who have completed four years' service as such, the senior assistant, if qualified, will be promoted to fill the first vacancy or new position."

It is evident to us that two methods exist under these rules by which an assistant signal maintainer might qualify as a signal maintainer; first, by serving a four year apprenticeship as an assistant signal maintainer at the step rates of pay provided, and second, by being promoted to signal maintainer before serving four years as an assistant signal maintainer and qualifying by rendering three months' competent service in the position. Surely, if an assistant signal maintainer qualified by one of the two prescribed methods, he would not have to qualify by the other. Having once qualified as a signal maintainer, the step rates of pay no longer apply to him because the reason for their application has been entirely removed. If no position is open for a qualified signal maintainer, he can continue as an assistant signal maintainer at the highest assistant's rate of pay. Rule 5 (c) spells this out as to assistant signal maintainers who have completed their four years' apprenticeship when no signal maintainer's position is open. An assistant signal maintainer who qualifies by promotion and three months'

competent service is in an identical position with the former and is entitled to the same rate of pay under the Agreement.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived hearing thereon;

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee 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 as charged.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 27th day of July, 1948.