Award No. 3628
Docket No. SG-3573

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Grady Lewis, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

THE LONG ISLAND RAIL ROAD COMPANY

STATEMENT OF CLAIM: (a) Claim that the Long Island Railroad violated the Signalmen's agreement when, on November 1, 1945, it assigned J. G. Wilson, who held no seniority, to a position of "Special Apprentice" in the T. & S. Department.

(b) Claim that the position of "Special Apprentice" in the T. & S. Department be discontinued immediately and not again be created until a classification covering such a position is established in the agreement in conformity with the provisions of the Railway Labor Act.

EMPLOYES' STATEMENT OF FACTS: J. G. Wilson was, on November 1, 1945, assigned without bulletin procedure to a position of "Special Apprentice" in the Signal Department on the Long Island Railroad. Since that time he has been assigned to various construction gangs and while so engaged has performed service under the direction of a mechanic or a foreman (such service being work covered by the Scope of the T. & S. agreement).

There is no classification identified as "Special Apprentice" in the T. & S. agreement.

There is an agreement in effect between the parties to this dispute bearing effective date of June 1, 1943, which should be considered a part of the record in this dispute.

POSITION OF EMPLOYES: The Brotherhood contends that the Scope of the agreement, effective June 1, 1943, covers all the employes performing the work specified therein. For your ready reference, we here quote the Scope:

> "These Rules, subject to the exceptions hereinafter set forth, shall constitute separate Agreements between the Pennsylvania Railroad Company, The Long Island Rail Road Company and Baltimore and Eastern Railroad Company, and their respective Telegraph and Signal Department employes, of the classifications herein set forth (and hereafter these Agreements for the sake of convenience shall be referred to as 'the Agreement')—engaged in the installation and maintenance of all signals, interlockings, telegraph and telephone lines and equipment including telephone and telegraph office equipment, wayside or office equipment of communicating systems (not including such equipment on rolling stock or marine equipment), highway crossing protection (excluding highway crossing gates not operated in conjunction with track or signal circuits), including the repair and adjustment of telegraph, telephone and signal relays and the wiring of telegraph, telephone and signal instrument cases, and

Effective September 23, 1938, the Brotherhood of Railroad Signalmen of America, on behalf of the employes represented by it, withdrew from the aforesaid "Memorandum of Understanding" from which the said System Board of Adjustment had derived its powers. However, this withdrawal from the Memorandum by the said Brotherhood in no way affected the force and binding effect of the interpretations already placed upon the said Schedule of Regulations by the System Board of the Reviewing Committee.

Since so far as the instant case is concerned, the provisions of the applicable Agreement of June 1, 1943, do not differ from the provisions of the said Schedule of Regulations which proceeded it (effective June 1, 1929 on the Long Island Rail Road), it is evident that the interpretation of the said Schedule of Regulations made in Decision 209, referred to above, is in full force and effect as an interpretation of the present Agreement.

IV. Under the Railway Labor Act, the National Railroad Adjustment Board, Third Division, is Required to Give Effect to the Said Agreement and to Decide the Present Dispute in Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act to give effect to the said Agreement, which constitutes the applicable Agreement between the parties, and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, subsection (i), confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the agreement between the parties to it. To grant the claim of the employes in this case would require the Board to disregard the Agreement between the parties hereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take such action.

CONCLUSION

The Carrier has established that under the applicable Agreement the employment of a Special Apprentice in the Telegraph & Signal Department was not a violation of the Agreement between the parties.

Therefore, the Carrier respectfully submits that your Honorable Board should dismiss the claim of the Employes in this matter.

The Carrier demands strict proof by competent evidence of all facts relied upon by the Claimants, with the right to test the same by cross examination, the right to produce competent evidence in its own behalf at a proper trial of this matter, and the establishment of a record of all of the same. Oral hearing is desired.

OPINION OF BOARD: The record shows that Carrier has, since 1931, with the exception of the war years, had a practice of employing Special Apprentices and assigning them to work in the Telegraph and Signal Department. Such employes do not displace any other employe, but are in addition to the regular force.

Such practice became the subject of a protest filed by the employes' representatives before their System Board of Adjustment in 1936. Decision No. 209 of that Board denied the protest and sanctioned such employment.

The interpretation placed upon the Agreement by that Board is binding upon this Board. And this is true notwithstanding the fact that a new Agreement has been negotiated by the parties since that decision, in that there is nothing carried forward in the new Agreement that would indicate that the interpretation of the System Board was intended to be completely eliminated.

The fact that Carrier, during the negotiations, suggested the inclusion of a paragraph embodying the provisions of the System Board's decision, neither added to nor took from that decision any of its force and effect. Nor does the fact that the scope rule in the new agreement goes more into detail than the like rule in the previous agreement alter the situation, as argued by Claimant. Both scope rules covered the class of work forming the basis of the complaint, and neither, by name, mentioned "Special Apprentice."

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 no rule of the Agreement is violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 22nd day of July, 1947.