

Award No. 4899

Docket No. TE-4806

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Thomas C. Begley, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE LONG ISLAND RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Long Island Railroad Company that the senior idle employe covered by the scope of the agreement in effect be paid eight hours at the pro rata hourly rate for each day that an employe not covered by the scope of the agreement between the parties is required or permitted to manipulate the levers at East New York.

EMPLOYEES' STATEMENT OF FACTS: Prior to June 16, 1946, East New York was manned by two employes coming within the scope of the Telegraphers' Agreement. Effective June 16, 1946, the positions occupied by the two employes were allegedly discontinued by the carrier. The time table issued by the carrier covering the movement of trains and the existence of interlocking station, and block station has continuously listed East New York as being in the category of each of the three descriptive titles above cited, page 10 of time table No. 15 in effect 12:01 a.m. Sunday, September 12, 1948 so lists East New York. All other locations on the Atlantic Branch of the carrier where these three descriptive titles above cited apply are manned by employes on a continuous twenty-four hour basis. (Exhibit 1.) At undefined intervals, semi-monthly or more frequently if necessary, employes of the carrier not represented by the organization are used to manipulate the levers at the tower at East New York, which manipulation governs the movement of trains. Employes represented by the Organization are thereby deprived of work and compensation to which they are entitled. An agreement is in effect between the parties effective June 1, 1945.

POSITION OF EMPLOYEES: The claim of the employees is filed under the Scope Rule of the agreement:

ARTICLE 1, SCOPE

"These Articles shall constitute an Agreement between the Long Island Railroad Company and its Station Agents and Assistant Agents (except Agents at Long Island City, Bushwick, East New York, Flatbush Avenue, Ray Ridge and Jamaica Stations), Train Directors, Telegraphers, telephone Operators, (except Telephone Switchboard Operators), Block Operators, Printer-Operators, Operator-Clerks and Levermen, represented by The Order of Railroad Telegraphers, and shall govern the hours of service, working conditions, and rates of pay of the said employes in the positions classified herein."

and Article IV, paragraph F:

"F. Extra employees called for service (unless notified not to report before leaving home) will, if not used, be allowed three (3) hours' pay at the straight time rate of the position for which called. If they report and are used, they will be paid a minimum of eight (8) hours at the straight time rate of the position worked."

In view of the foregoing and since it has been established that the work upon which this claim is predicated is work which properly accrues to Telegraph & Signal Department Employees and not to Telegraph Department Employees, there is no basis for this claim under any provision of the applicable Agreement or the interpretations thereof and it should, therefore, be dismissed.

III. 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 Railroad 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 Employees in this case would require the Board to disregard the Agreement between the parties thereto and impose upon the Trustees of The Long Island Railroad Company, Debtor, 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.

OPINION OF BOARD: The Employees claim that East New York was closed and the telegrapher positions were discontinued as of June 16, 1946. Twice monthly, or oftener if necessary, telegraph and signal employees test switches and signals at this station.

The Employees claim that the time table issued by the Carrier covering the movement of trains and the existence of interlocking station or block station has continuously listed East New York as having these titles (Employees' Exhibit 1).

The Employees further state that all other locations, on the Atlantic Branch of the Carrier, where these descriptive titles apply are manned by employees on a round-the-clock basis; that employees of the Carrier not represented by the Organization are used to manipulate the levers at the Tower at East New York, and that they govern the movement of trains. The Employees state the Agreement of June 1, 1945, has been violated and cite Rule I (Scope) and IV (Pay & Time Allowance). The Employees cite a number of awards which they claim sustain the finding of an affirmative award.

The Carrier states that there is no provision in the effective Agreement which provides that the work upon which this claim is predicated accrues to telegraph department employees represented by The Order of Railroad Telegraphers. The Carrier states that the manipulation of the levers, by the telegraph and signal department employees at East New York, is purely for testing purposes and not for the regulation of the movement of traffic through the interlocking station. The Carrier states that East New York is a semi-automatic plant and that the normal set-up of the plant is straight through the interlocking station. This condition prevailed when the station was open prior to June 16, 1946, with a block operator on duty. The Carrier states that under the Regulations of the I.C.C. tests must be made periodically by

telegraph and signal employees (Carrier's Exhibit "B"). The Carrier states that before making these tests the telegraph and signal foreman ascertains the condition of the traffic by checking with block operators at the next interlocking station to the east and west of East New York. When traffic warrants, they proceed with the tests. If notified by the block operator to the east or west that traffic is approaching, they return the interlocking at East New York to its normal position to allow the traffic to pass East New York—then proceed with their tests. The Carrier states that the testing at this station would consume an average of forty-five minutes per test.

From the evidence produced by submission and the arguments before the Board it is clear that the testing of switches belongs to the craft of telegraph and signal employees; that the testing of the switches at East New York, a closed station on the Atlantic Branch of the Carrier, is done periodically by telegraph and signal employees; that when they manipulate the levers it is done for testing purposes and not to govern the movement of trains; that the manipulation of levers by the telegraph and signal employees is incidental to and in connection with the testing and does not violate the Scope Rule of the Telegraphers' Agreement (Award 3524). For this reason this claim does not show a violation of the Agreement by the Carrier and should be denied.

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 Employees involved in this dispute are respectively carrier and employees 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 not violated by the Carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 5th day of July, 1950.