

Award No. 4900

Docket No. TE-4807

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 that the carrier violates the Scope Rule of the agreement between the parties on each and every day since May 16, 1945, that:

1. It has used employes not covered by said Scope Rule to perform work at Locust Manor and Aqueduct that employes represented by the Organization are entitled to perform under the said Scope Rule, and
2. The carrier shall now be required to assign the work at Locust Manor and at Aqueduct to employes represented by The Order of Railroad Telegraphers on each and every day that work covered by the Scope Rule of the agreement is to be performed.

EMPLOYES' STATEMENT OF FACTS: During the racing seasons at Aqueduct Race Track and at Jamaica Race Track, Long Island, where three race meets are held each year, extending from early April to the middle of September, the carrier maintains extra force for the handling of race track trains. Originally and for a period of many years one employe represented by the Organization was stationed at each point, Locust Manor and Aqueduct to handle the movement of the race track trains, keep records of such train movements, reporting of such train movements to the Movement Director (Train Dispatcher) and to the block operators at adjacent block offices and keeping the records pertaining to such train movements the employe at Locust Manor reporting to the block operators at Hall and Valley in addition to the Movement Director (Train Dispatcher) and the employe at Aqueduct reporting to the block operators at Ozone and Beach. Hall is west of Locust Manor—Valley is east of Locust Manor.

Ozone is west of Aqueduct. Beach is east of Aqueduct.

East bound trains are loaded with incoming passengers for the tracks. West bound trains are loaded with outgoing passengers from the tracks.

At the present time and extending back over several racing seasons the carrier has assigned the work in dispute to an employe (Special Duty Conductor) not coming within the scope of the agreement between the parties.

This is an agreement in effect between the parties dated June 1, 1945.

before your Honorable Board and may not be considered on its merits and should, therefore, be dismissed.

In view of the foregoing and on the basis claimant's request is not supported by any provision of applicable Schedule Agreement, it is respectfully requested that your Honorable Board deny this claim or request.

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 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 Employees in this case would require the Board to disregard the Agreement between the parties thereto 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.

(Exhibits Not Reproduced).

OPINION OF BOARD: The facts in this claim have been ascertained by a joint check of the operation and duties made by the parties to the dispute on July 1, 1947, and set forth in a letter dated July 10, 1947, signed by Mr. I. W. Chaires, General Chairman of The Order of Railroad Telegraphers, for the Employees and by Mr. E. K. St. Clair, Assistant Passenger Train Master, for the Carrier. This joint check was made of the operation and duties at Locust Manor for the Jamaica Race Track.

The Employees state that the Carrier has maintained extra forces for approximately six months of each year to handle race track trains. This has not been denied by the Carrier.

The joint check of the work performed at Loust Manor for the Jamaica Race Track, dated July 10, 1947, shows that the following work is being performed. This report is shown as Carrier's Exhibit "B" and also shown in Employees' ex parte submission.

Page I, paragraph IV, of joint check:

"While eastward movements to the track were being made, it was developed that Special Duty Conductors Purtill and Priest obtained Conductor's CT 15 reports, kept a mimeograph form on which they entered car numbers and crew names, so that on westward movements this information would be readily available for further movements. Also, Special Duty Conductor Priest called the Movement Bureau and Valley interlocking and gave a list of the extras and the locations where they were to be stored during the period of the race."

Page II, paragraph II, of joint check:

"(1) Prior to the end of the race he calls the Train Dispatcher direct and gives him a list of the extras and the order in which they are to be dispatched from Far Rockaway, Long Beach or other

locations where they may have been stored. When Train Dispatcher knows regular trains are late or out of order, he so advises Mr. Priest by telephone in order that necessary arrangements can be made."

Page II, paragraph III, of joint check:

"(2) Mr. Priest keeps a record of the movement on yellow note paper, on which he records time by switch of regular trains (identifying by head motor number), and when he is ready to use the main track at the west end of the siding, he calls the Block Operator at Valley, identifies train by head motor number, reports the passage of such train and asks for permission to occupy the main track. Valley obtains the permission from the Train Dispatcher, who issues the necessary protective train order, and Valley then gives Mr. Priest the necessary permission to occupy the main track. Mr. Priest arranges to protect the main track in accordance with Rule 99, using a flagman provided for this purpose. During the life of Time-Table No. 11 the race trains had scheduled numbers and scheduled leaving times from the track, and Mr. Priest used those numbers in reporting them to the Movement Bureau and Hall Tower when handling such trains as first-class trains."

Page II, paragraph V, of joint check:

"(4) The mimeographed form, partially set up by Mr. Priest and Mr. Purtill during the time of the eastward movement, is kept up to date as the various trains leave the race track. This form contains the following heading: Train Number—Run Number—Destination—Motor Number—Name of Conductor—Number of Engine—Number of Cars—Leaving Time—Arriving Time—Number of Passengers—Motor Number East—Equipment Used for.

"At the completion of the day Mr. Purtill delivers this form to the Movement Director, who places same on file as a matter of referred to the race track personnel for answer, and that it has tions raised as to performance, injury claims, etc. are frequently referred to the race track personnel for answer, and that it has been to his advantage to keep a second copy, himself, to make this information more readily available; this he does."

All of the above work relating to calls by telephone, the recording of train movements and the blocking of trains belongs to The Order of Railroad Telegraphers under their existing Agreement, Article I (Scope), with the Carrier, and has been held by many awards as work that cannot be delegated to employees outside of the Scope of the Agreement.

Carrier contends that because the Employees, since 1935 by their own admission, acquiesced in this operation at the race tracks, that they are now barred by estoppel to have this claim sustained. The Board cannot agree with this contention. As many awards hold, a continued violation of the Agreement by the Carrier without protest by the Employees is no defense for the violation.

The Carrier contends that the claim as to Aqueduct should not be considered by this Division as it has not been presented to the highest operating officer of the Carrier, as required by the Railway Labor Act, as amended. This claim was presented, as to Aqueduct, by the Employees to the highest designated operating officer, as shown by Carrier's Exhibit "I" which refers to Case 5-45—Operator at Race Tracks (emphasis added).

The Board finds from the evidence and arguments submitted by the parties that the Carrier has violated the Agreement at Locust Manor, and