

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

**THE LONG ISLAND RAILROAD COMPANY, Debtor
(William H. Draper, Jr., Trustee)**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Long Island Railroad that the position of the T. & T. Maintainer on the test board at Jamaica, Long Island be paid five cents per hour differential above the rate paid to the T. & T. Maintainer and that this claim be retroactive to October 20, 1943, the date these other T. & T. Maintainers were allowed a six cent adjustment.

EMPLOYEES' STATEMENT OF FACTS: The position of T. & T. Maintainer on the test board at Jamaica, Long Island, is a regularly assigned position with tour of duty from 8:00 A.M. to 4:30 P.M. with a meal period 12 noon to 12:30 P.M., Monday through Saturdays.

The test board is a device used for the purpose of testing and locating trouble on telephone and telegraph lines. The Maintainer assigned to the test board works with the Maintainer on the ground in the event of trouble, or if adjustments and changes are made in T. & T. circuits. This test board Maintainer supervises the work of other T. & T. Maintainers while performing his duties on this position. The T. & T. Maintainers who work under the jurisdiction of the Maintainer involved in this claim are being paid in accordance with Article 5, Section 4, of the current agreement which provides a method of payment to those employees who are regularly assigned to the inspection, testing, and repairs of relays, insulated wire, or locking.

A formal protest was filed with the Supervisor of T. & S. and has been progressed in the proper and usual manner up to and including the highest officer of the Carrier designated by the management to whom appeals may be made, without securing a satisfactory settlement.

There is an agreement between the parties involved in this dispute bearing effective date of June 1, 1943. We understand there is a copy of this agreement on file with the Board and request is made that it be made part of the record in this dispute.

POSITION OF EMPLOYEES: It is the position of the Brotherhood that the T. & T. Maintainer assigned to the test board at Jamaica, Long Island, should be classified as a Leading Maintainer and should be paid an hourly rate which shall be five cents per hour in excess of the highest hourly rate

at Jamaica was performing Leading Maintainer's work, although the occupant of this position has performed the same work and assumed the same responsibility for the past 23 years without protest. Actually, in the face of the record, it is only fair to assume that if the hourly rate of pay of the T. & T. Maintainer working in the field had not been adjusted in 1948, the instant claim would not have been instituted.

In conclusion, we desire to again emphasize that this claim has no support under any provision of the applicable Agreement since the Vice General Chairman and the Superintendent have agreed in the Joint Statement of Facts (see Carrier's Exhibit "A") that the T. & T. Maintainer assigned to the Test Table does not supervise the work of other T. & T. Maintainers; that he is not held responsible for the work performed by other T. & T. Maintainers but merely works in conjunction with them. Further, since the T. & T. Maintainer assigned to the Test Table at Jamaica is regularly assigned to and held responsible for the inspection, testing and repairs of relays, insulated wire or locking, he is excepted from the provisions of Article 1, Section 2, which provision outlines the duties and responsibilities of a Leading Maintainer and the employees that come within that category. We also desire to reiterate that this position has been in existence for 23 years with the same duties and responsibilities and heretofore no contention has ever been made that the employee assigned thereto performed Leading Maintainer work.

Even if all of the foregoing evidence were to be disregarded and the employees' contention sustained, they would still be barred from recovery prior to 90 days from the date on which the Claimant received his pay check for the first half of April, 1948, under the provisions of Article 2, Section 21, since the first claim of record was April 6, 1948.

It is a well established and accepted principle that this Honorable Board does not have the authority to write new rules—See Awards 2343, 4335, 4739, 7057. To allow the instant claim would require your Honorable Board to disregard this principle and include within a collectively bargained agreement a new and different rule not previously agreed to by the parties.

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 and 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 Trustee 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.

(Exhibits not reproduced.)

OPINION OF BOARD: Section 2 of Article 5 of the applicable agreement provides for a five cent per hour differential for Leading Maintainers. Section 4 thereof establishes a six cent per hour differential for T. & T. Maintainers "regularly assigned to and held responsible for the inspection, testing and repair of relays, insulated wire or locking."

Section 2(a) of Article 1 of the Agreement provides:

"Leading Maintainers: A maintainer working with and assigned to supervise the work of one or more signal maintainers, telegraph and signal maintainers, telegraph and telephone maintainers, or signalmen, with or without their assistants or helpers. The number of employers so supervised shall not exceed a total of five (5) at any one time. This paragraph does not apply to employees regularly assigned to and held responsible for the inspection, testing and repairs of relays, insulated wire or locking."

It appears to us that the only possible interpretation to be placed upon the last sentence of that section is that the parties intended that an employee could not be eligible for the differential established by Article 5, Section 2, and the differential established by Article 5, Section 4, at the same time.

The Claimant has been receiving the differential established by Article 5, Section 4, for many years. Hence, we find the claim to be without merit.

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 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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 17th day of October, 1951.