

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Emmett Ferguson, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

**THE LONG ISLAND RAILROAD COMPANY, DEBTOR
Wm. Wyer, Trustee**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Scope Rule and other provisions of the Clerks' Agreement when it made a private contract with James A. Crowe, to handle all U.S. Mail at Lynbrook, N.Y., and at Rockville Centre, N.Y., said contract covering all work done between the hours 4:15 A.M. and 11:45 P.M., each day, and for such services James A. Crowe is paid the amount of \$944.00 per month, and
2. The work of handling U.S. Mail between trains and U.S. Mail trucks, operating elevators and sorting U.S. Mail, shall be assigned to employees holding seniority rights under the Clerks' Agreement, and
3. The Carrier shall pay all affected employees for each day unassigned, and at prevailing rates of pay, including all wage increases, payments to be based on the number of positions bulletined and required, retroactive to July 1, 1950.

EMPLOYES' STATEMENT OF FACTS: There is in effect a Rules Agreement, covering clerical and other office, station and storehouse employees between this Carrier and this Brotherhood. The Agreement was made effective December 10, revised and later made effective July 1st 1945 and amended effective July 1, 1949. Various Rules, Memorandums and Interpretations therefore may be referred to from time to time without quoting in full.

Prior to grade crossing eliminations at Lynbrook, N.Y. and Rockville Centre, N.Y., U.S. Mail trucks were able to transfer U.S. Mail directly between the Long Island trains and trucks. This was accomplished by the trucks backing up to the mail or baggage car doors of the Carrier for direct delivery or receiving of U.S. Mail. The grade crossing eliminations raised the tracks, station platforms and trains, above street level, to such an extent that elevators were installed to raise and lower baggage and U.S. Mail. Station platforms were also raised to car door level. All grade crossing watchmen, a twenty-four hour service, were eliminated.

A Joint Statement Of Agreed Upon Facts was entered into between the Carrier and the Brotherhood which reads as follows:

No. 4987 certified as being perfectly proper under the applicable Rules and Working Conditions Agreement.

In view of the foregoing, there can be no basis under any premise for granting that portion of this claim seeking recovery for "**the senior unassigned employees**" and regardless of any other consideration that portion of this claim should be denied.

In conclusion, we desire to emphasize:

(a) That your Honorable Board may not properly accept jurisdiction over this controversy since the work upon which it is predicated does not come within the Brotherhood's Rules and Working Conditions Agreement—See Awards 4768-4452 this Division.

(b) It is not controverted that the work in question had never been performed by employees represented by the Brotherhood on the effective date of the current Rules & Working Conditions Agreement and no claim was made for this work by the Brotherhood in the negotiations leading up to the current Rules and Working Conditions Agreement. Consequently, there can be no basis for the Brotherhood's instant request for this work since it is established that practices in effect when a Rules & Working Conditions Agreement is negotiated or re-negotiated and not changed thereby are binding on the parties and may not be changed thereafter except through the process of collective bargaining. See Awards 1252, 1257, 1397, 2436, 4493, 5005, 5404, this Division.

(c) That regardless of any other consideration there can be no basis for the Brotherhood's prayer for monetary recovery on behalf of the "**senior unassigned employees**" since if we were required to have this work performed by employees represented by the Brotherhood we would have it performed by other employees already assigned at these locations incident to the primary duties of their positions. See Award 4987, this Division.

In view of the facts presented and for the reasons stated, there is no basis for this claim and it should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The joint statement of facts in this docket proves that when the tracks were elevated at Lynbrook, December 1, 1938, and at Rockville Centre, July 17, 1950, the method of handling mail at these places was changed. The Carrier at those times employed a contractor at those places to handle the mail to and from the trains and from and into the hands of the U. S. Post Office Department.

By the Scope Rule, the Carrier contracted with the Clerks' Organization to cover the job of "mail handlers" in Seniority District No. 4. Mail handling work thereby became the work of those employees belonging to the Clerks' Organization. Contracting such work out becomes a violation of the governing rules.

However, we note that the practice began at Lynbrook on December 1, 1938, and that the effective Agreement was signed effective July 1, 1945. Therefore, the practice at that point must have been accepted by the Clerks even though they now claim they only became aware of the direct payment made to the contractor in 1950.

The Scope and Seniority Rules then were violated if, as here shown, at Rockville Centre the action was taken by the Carrier after the Agreement became effective, but not at Lynbrook where the practice was already in effect when the Agreement was signed.

As to Claim 1, we are of the opinion that it should be sustained, in part, but as to Claim 2, we are of the opinion that it is an accepted theory of this Division that we would exceed our authority if we ordered the Carrier to establish a position. However, we are permitted to point out the violation and we note that it is a continuing one, and because it is so decided, we are of the opinion that it should cease.

Considering Claim 3, we are of the final opinion that the Carrier shall pay all affected employes for each day unassigned, at prevailing rates of pay, for the work denied them at Rockville Centre since July 17, 1950, but not for any work done at Lynbrook under a practice prevailing in 1945 when the governing contract was negotiated by the parties.

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 the Carrier has violated the terms of the Agreement at Rockville Centre since July 17, 1950, by refusing mail handlers the work of handling mail; but has not violated the Agreement at Lynbrook as claimed.

That the Carrier should pay only the affected employes for each day unassigned, at prevailing rates of pay, including all wage increases, for the work denied them at Rockville Centre since July 17, 1950.

AWARD

Claims sustained in part, as per Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 30th day of November, 1953.