

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

LeRoy A. Rader, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE LONG ISLAND RAIL ROAD COMPANY, Debtor
WM. WYER, Trustee**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Long Island Rail Road, that

(1) The Carrier violated the provisions of the effective Agreement between the parties when on June 24, 1949, acting alone, it allegedly discontinued the three positions of Block Operator at Mount Olivet, L. I., New York, without in fact discontinuing the duties belonging to said Block Operator's positions, permitting the regular occupants of these Block Operator's positions to displace employees, which in turn caused other displacements;

(2) The employees, including the regular assigned rest day relief employees, who were improperly removed from their assignments at Mount Olivet, and all other employees resultantly displaced from their assignments, shall be restored thereto, and compensated in full for all wage loss, plus expenses, and travel time, for each day beginning with the date their assignments were improperly declared abolished, or the date they were displaced, and continuing each day thereafter until the work in question is restored to the agreement and the displaced employees returned to their respective assignments; and

(3) All other employees who were deprived of work as a result of this violative act shall be paid for all wages lost.

EMPLOYEES' STATEMENT OF FACTS: The current agreement between the parties effective June 1, 1945 lists at page 31, the following positions at Mount Olivet Block Station, located on Long Island, New York, along with many other positions, all covered by the rules of said Agreement:

Location	Office Call	Trick	Position	Hourly Rate of Pay
Mount Olivet	Olivet	1st, 2nd, 3rd	Block Operator	C \$0.89

These three positions at Mount Olivet, including all of the work in connection with the movement and protection of trains and the operation of the crossing gates for the protection of vehicles and pedestrian traffic moving

and Working Conditions Agreement between this Carrier and The Order of Railroad Telegraphers, a new and different rule not agreed to by the parties; a prerogative which your Honorable Board does not possess—See Awards 871, 1230, 2612, 2622, 3407, 4763, 5079—this Division.

To summarize, it is the position of the Trustee:

(a) That this controversy is a jurisdictional dispute and therefore, does not come within the category of a dispute referable to the National Railroad Adjustment Board, Third Division.

(b) That regardless of any other consideration, the Brotherhood of Maintenance of Way Employees is an interested party and therefore, the Third Division, National Railroad Adjustment Board is obligated to give that Organization notice of the pendency of this dispute and accord them the opportunity of participating in any and all proceedings that may be held in connection with it.

(c) That the work for which claim is made has never been performed by the crafts or classes of employees represented by The Order of Railroad Telegraphers on this property except when performed incident to the primary duties of their positions.

(d) In view of the nature of this claim, it would be necessary for your Honorable Board, in order to sustain it, to disregard all of the foregoing and to include within a collectively bargained Agreement, a new and different rule not heretofore agreed to by the parties. This your Honorable Board does not have the authority to do.

(e) That even if this claim were to be sustained, and there is no basis for such action, the maximum recovery to which any Claimant represented by The Order of Railroad Telegraphers would be entitled to is the difference, at straight time rate of pay, between what he earned because of employees other than those represented by The Order of Railroad Telegraphers performed this work and what he would have received if employees represented by The Order of Railroad Telegraphers had performed this work.

In view of the foregoing and for the reasons stated above, this claim should be denied.

(Exhibits not reproduced)

OPINION OF BOARD: The facts in this case are not in dispute. They are, in brief, as follows: Prior to June 24, 1949, A Block Station was maintained at Mount Olivet, L.I., New York, the claim point, manned by Block Operators covered by the Telegraphers' Agreement, three tricks per day, on a seven day per week basis. The primary duties, regulating the movement of trains and also the movement of trolley cars which crossed Carrier's tracks at grade at Flushing Avenue. In June, 1949 the operation of the trolley line was discontinued and thereafter the block station and the interlocking signal arrangement to control the movement of trolley cars across Carrier's tracks was abandoned. Only the operation of the crossing gates remained to protect traffic on the highway. When this occurred highway crossing watchmen represented by the Brotherhood of Maintenance of Way employees were assigned to protect the highway crossing by operating the gates.

Claim was instituted June 28, 1949; conference held September 1, 1949 and claim denied September 7, 1949. Notice of intent to file with this Board an ex parte submission was filed by Petitioner on October 13, 1952.

The claim is a continuing one and the delay of some three years prior to filing claim here can be considered significant in that it gives an insight relative to the merit of the same in the eyes of the Petitioner. While there is

no time limitation involved yet the delay of such a length of time before pressing the claim must be viewed as not being reasonable in view of the fact that the claim is a continuing one involving three tricks per day on a seven day a week basis. Apparently the work was incidental to the job originally, the change in operations is viewed as sufficient to warrant the change in operators to an extent coupled with the delay in filing the claim here to defeat the claim.

A jurisdictional question is raised on behalf of Carrier relative to notice to the Brotherhood of Maintenance of Way Employees, however, in view of the Finding to be made herein on the merits we do not think it necessary to give consideration to the same.

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

Claim denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 31st day of March, 1954.