

Award No. 6042

Docket No. TE-5991

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE LONG ISLAND RAILROAD COMPANY

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 violates the terms of the Agreement between the parties when it requires the incumbents of the first and second shift Train Director positions at Jay and Hall Towers, Jamaica, N.Y., monthly rated positions, assigned hours 7:00 A. M. to 3:00 P. M. and 3:00 P. M. to 11:00 P. M., respectively, to assume the duties, and relieve the occupants of the first and second shift block operator positions, hourly rated, assigned hours 7:00 A. M. to 3:00 P. M. and 3:00 P. M. to 11:00 P. M., respectively, on Sunday, one of the assigned rest days of said first and second shift block operators, and

(2) Beginning with Sunday, November 5, 1950, and continuing until the violations are corrected, the Carrier shall compensate for each day of the violation:

(a) The senior available extra employe who has not had forty hours work in his work week for eight hours at the straight time rate of the block operator positions at Jay and Hall Towers respectively, or

(b) If no such available extra employe, then the Carrier shall compensate the regular occupants of the positions of first and second block operator at Jay and Hall Towers respectively, for a minimum of eight hours at the time and one-half rate.

seniority rules of the applicable Agreement specifically accord the right to employees possessing seniority in Group 2 ("All other employees covered by this Agreement) to perform whatever Telegraph Department work they can obtain by virtue of their qualifications and through the exercise of their seniority. Third, we have conclusively established that it was the unprotested practice to have Train Directors perform the work upon which this claim is predicated on the effective date of the current Rules Agreement and that nothing expressed or implied in the current Rules Agreement in any way affected this practice. Fourth, to allow the employees' claim would necessitate the writing of a new and different rule not heretofore agreed to by the parties to the applicable Agreement, a prerogative which your Honorable Board does not possess.

We desire to also call attention to another pertinent fact concerning this matter.

As a direct result of a construction project in the vicinity of 'Jay' Tower the volume of work to be performed by the 3rd Trick Block Operator position at that location was appreciably increased. In order to adequately compensate the employee assigned to this position for the increased amount of work the title of the position was changed from Block Operator to that of Train Director. The only change effected by this move was to give the incumbent a higher rate for the work he performed since coincident with the change of title the Block Operator position passed out of existence and the total force on duty on the 3rd trick remained unchanged; Two Men, a Train Director and Levermen.

The very fact that the General Chairman acquiesced in this arrangement is position proof that he has never heretofore attempted to hold that a so-called monthly rated employee in Group 2 could not properly perform any work which accrued to that group.

As we have previously pointed out, the General Chairman by prosecuting this claim, is endeavoring to accomplish through an award of this Division, something which may only properly be accomplished through the process of collective bargaining.

Further, that this claim is not supported by any provision of the applicable Agreement, the Agreed Upon Interpretations thereof, or the established and accepted practices under the Agreement.

We desire to also again emphasize that the situation on Sundays at 'Jay' and 'Hall' Tower is no different now than it was on the effective dates of the applicable Agreement, i. e., Train Directors were performing the same duties on Sundays on the first tricks at 'Jay' and 'Hall' Towers on June 1, 1945 as they are now performing, without any protest whatsoever from the Organization.

Therefore, in view of the facts presented and for the reasons stated, this claim should be denied.

(Exhibits not reproduced).

OPINION OF BOARD: The agreement between the parties does not specify the duties of nor the work to be performed by the positions covered. Hence it is necessary to look to practice and custom to ascertain the duties properly performable by a listed job classification.

Here it appears that for many years, train directors have operated the interlocking stations involved on Sunday without the assistance of a block operator and the same situation has existed on the third trick at one of these stations for some time. Consequently we must find that it is proper to require the performance by train directors of duties which may at other times or places be performed by block operators.

Certainly the forty-hour week agreement made no change in the duties performable by a job classification nor did it alter the Carrier's right, consistent with the agreement, to determine the number of employees required for its operations. Both of those matters remaining as they were under the prior Agreement, and the work assignments involved remaining as they existed for years under the prior agreement, the claim is 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 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.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 22nd day of January, 1953.