Award No. 9004
Docket No. TE-6722

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Carroll R. Daugherty, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE LONG ISLAND RAIL ROAD COMPANY

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

(1) The Carrier violated and continues to violate the provisions of the agreement between the parties, when and because it removed train order work from Harold Tower commencing July 23, 1951, and transferred this work to employes working under another agreement on another railroad.

(2) If the Carrier elects to continue the performance of this train order work, it shall be performed by, and assigned to, employes coming under the scope of the Agreement on the Long Island Railroad at Harold Tower.

EMPLOYES' STATEMENT OF FACTS: An agreement is in effect between the parties bearing date of June 1, 1945, amended September 1, 1949, hereinafter referred to as the Telegraphers' Agreement.

Harold Tower is located on Long Island just east of the railroad tunnel beneath the East River between Manhattan and Long Island. Long Island Railroad trains to and from Pennsylvania Station in Manhattan and Long Island points are handled through the facilities of Harold Tower. In addition to these Long Island Railroad train movements, trains are handled to and from connecting tracks of the New York, New Haven and Hartford Railroad* through Harlod Tower interlocking limits to and from Oak Point (Signal Station No. 4) on the New Haven Railroad and Sunnyside Yard, located on the Pennsylvania Railroad, a short distance just northeast of Harold Tower. Movements in and out of Sunnyside Yard proper are controlled by Pennsylvania Railroad employes in "Q" Tower.

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* Hereinafter referred to as New Haven Railroad.

Further, that this is the only change which has been made in the manner in which this work is performed since the Station was opened in 1910 or a period of some 43 years. During this entire period of time, there has been no change whatsoever in the work which the Long Island Operators performed, that is, receiving a copy of the Orders issued by the New Haven Train Dispatchers to their crews at Pennsylvania Station in New York in order that the Block Operators at 'Harold' Tower may have the information necessary to route New Haven trains through 'Harold' Interlocking, in order that they will enter upon the tracks of the New York Connecting Railroad, which the New Haven Dispatcher desires to move them on.

The initial Agreement on this property with the Order of Railroad Telegraphers became effective June 1, 1938 and was superseded on June 1, 1945 by the present Agreement. Therefore, since it has been established that the work upon which this claim is predicated has never been performed by employes of this Carrier, and as this work was being performed on the effective date of both the initial Agreement and the instant Agreement by Pennsylvania Railroad Employes, without protest from our employes, or without any effort being made to bring it within the scope of the Long Island Agreement, it follows that our employes now have abolutely no claim for this work.

If this claim were to be allowed, and as we have previously pointed out, there is no basis for such action, your Honorable Board would be expanding the scope of a collectively bargained Agreement without the consent of both of the parties thereto, a prerogative which you admittedly do not possess.

In conclusion, the Trustee desires to again point out that the instant claim is in fact an attempt by one Division of the Order of Railroad Telegraphers to take work from another Division of the Order of Railroad Telegraphers, which they have admittedly performed for over the past 43 years without protest by Long Island Rail Road employes.

Therefore, the Telegraph Department employes represented by the Order of Railroad Telegraphers on the Pennsylvania Railroad are interested parties in the instant controversy and entitled to the notice of the pendency of this dispute and to be afforded the opportunity of participating in any and all proceedings which may be conducted in connection with it. Further, that Long Island Rail Road Telegraph Department Employes have never performed the work upon which this claim is predicated and during the period which this work has been performed by Pennsylvania Railroad Employes, the Long Island Rail Road Rules and Working Conditions Agreement has been revised on 2 occasions without any request or protest being made in connection with the work upon which this claim is predicated. Therefore, since it is well established that when a Rules and Working Conditions Agreement is revised and a group of employes are not performing a particular item of work at that time and do not make any effort to acquire it during those negotiations they thereafter have no claim for this work.

In view of the foregoing and for the reasons stated, there is no basis for this claim and it is accordingly declined.

(Exhibits not reproduced.)

OPINION OF BOARD: At Harold Tower Carrier has an interlocking plant which is located just east of the railroad tunnel under the East River between Manhattan and Long Island and through which trains of Carrier and of the New Haven pass to and from the Pennsylvania Station on Manhattan

and to and from the Sunnyside Yard of the Pennsylvania Railroad. Train movements immediately into and out of said Yard are controlled by Pennsylvania Railroad operators at said Carrier's "Q" Tower, adjacent to said Yard.

The train movements involved in the instant dispute are those of the New Haven eastward past "Q" Tower, over Long Island tracks controlled by operators in Harold Tower, and on to westbound New Haven tracks to Oak Point, Signal Station No. 4. Said movements are and were under the direction of the New Haven train dispatcher.

For some years prior to 1951, when train orders were used, said dispatcher sent said orders to Carrier's Harold Tower operators. These Telegraphers not only lined up the necessary tracks and signals but also walked across several tracks to deliver in person the copies of the orders to the crews of the New Haven trains.

In 1952 a New Haven dispatcher's telephone was installed at "Q" Tower, and said dispatcher began to send his orders, for delivery to his train crews, through the operators at "Q" Tower. Harold Tower operators of course continued to receive the orders so that the switches and signals of the Long Island stretch could be lined up, but said operators no longer delivered the orders to the train crews.

It is this 1952 change that is here being protested. No Harold Tower positions were abolished as a result thereof.

The Employes charge Carrier with violation of their general Scope Rule, on the ground that by long-continued custom and practice the Harold Tower (Long Island) operators came to "own" the work of delivering the train orders to the crews.

Carrier defends by arguing that (1) train crews may receive orders at any open telegraph station en route, regardless of its location; and (2) Carrier (the Long Island) has no direction or control over what another carrier like the New Haven does and is powerless to prevent the latter from having the train orders delivered by "Q" Tower rather than Harold Tower employes.

The record establishes the fact of the pre-1952 practice alleged by the Employes. This Board has often held that a general scope rule like the one here involved is to be interpreted and applied and is to be given meaning and content through the custom and practice, especially that at specific locations, that has been developed over the years. Given said fact and said principle, it might appear that in respect to the instant case no other conclusion is possible than that the Scope Rule here involved was violated. But the matter is not so simply resolved. It is complicated by the facts that (1) the employes who were given the train order work formerly performed by men at Harold Tower were employes of another carrier and (2) yet another carrier was involved in said transfer of work.

Of these two complicating facts, the latter is the crucial one. It raises the question as to which railroad—the Long Island or the New Haven—was the moving force in effecting the above-stated transfer of work. In the light of a number of previous awards of this Division, e.g., Award No. 4353, if the Long Island was the moving party, the substance of the claims here before the Board, would be sustainable; but if the New Haven was mainly responsible, the claims could not be upheld.

On this critical question, the record of the case cannot be said to contain sufficient evidence to support a conclusion that the Long Island Railroad was the initiating, moving force that caused the delivery of train orders to New Haven trainmen to be transferred from Harold to Q Tower men. The record does not contain a copy or summary of the contract, if any, between the Long Island and the New Haven. Nor is there other information sufficient or proper on which to ground the inference that any party other than the New Haven was responsible for said transfer.

This being so, the Board is compelled to rule that Carrier did not violate the Scope Rule of its Agreement with the Employes.

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 Carrier did not violate the Agreement.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of October, 1959.