

**REPORT
TO
THE PRESIDENT
BY
EMERGENCY BOARD
No. 202**

**APPOINTED BY EXECUTIVE ORDER 12480,
DATED JUNE 20, 1984, PURSUANT TO SECTION 9A
OF THE RAILWAY LABOR ACT, AS AMENDED.**

**To investigate a dispute between The Long Island Rail Road and the
Brotherhood of Locomotive Engineers.**

(National Mediation Board Case No. A-11345)

**WASHINGTON, D.C.
JULY 20, 1984**

LETTER OF TRANSMITTAL

THE PRESIDENT
The White House
Washington, D.C.

WASHINGTON, D.C.
July 20, 1984

DEAR MR. PRESIDENT:

On June 20, 1984, pursuant to Section 9A of the Railway Labor Act, as amended, and by Executive Order 12480, you created an Emergency Board to investigate the dispute between The Long Island Rail Road and the Brotherhood of Locomotive Engineers.

Following its investigation of the issues in dispute, including both formal hearings and informal meetings with the parties, the Board has prepared its Report and Recommendations for settlement of the dispute.

The Board now has the honor to submit its Report to you, in accordance with the provisions of the Railway Labor Act, and its Recommendations as to an appropriate resolution of the dispute between the parties.

The Board acknowledges the invaluable assistance of Mary L. Johnson of the National Mediation Board's staff, who rendered aid to the Board during the proceedings, and particularly in the preparation of this Report.

Respectfully,

RICHARD R. KASHER, *Chairman.*
MARGERY F. GOOTNICK, *Member.*
RODNEY E. DENNIS, *Member.*

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I. CREATION OF THE EMERGENCY BOARD

Emergency Board No. 202 was created by President Reagan on June 20, 1984, by Executive Order No. 12480 issued pursuant to Section 9A of the Railway Labor Act, as amended, 45 U.S.C. Section 159a. The Brotherhood of Locomotive Engineers (BLE) had requested the creation of such a board on June 14, 1984.

The President appointed Richard R. Kasher, an attorney and arbitrator, as Chairman of the Board. Margery F. Gootnick, an attorney and arbitrator and arbitrator Rodney E. Dennis were appointed as Members of the Board.

II. PARTIES TO THE DISPUTE

A. The Carrier

The Long Island Rail Road (LIRR) is a public benefit corporation owned and operated by the Metropolitan Transportation Authority, an agency of the State of New York. The LIRR is the only mode of public transportation that provides through service from the eastern end of Long Island to Manhattan, and is a vital link in the mass transportation system of the New York City metropolitan area. Its freight and passenger service operates over a system covering approximately 325 miles of track. The LIRR employs approximately 7,300 persons, 6,700 of whom are covered by collective bargaining agreements.

The primary business of the LIRR is its commuter traffic. Every weekday the LIRR carries approximately 280,000 passengers. Its revenue from passenger operations was approximately \$200 million in 1982 (the last year for which data are available), an increase of 11 percent over the 1981 level. (A fare increase averaging 25 percent went into effect on July 1, 1982, and accounts for much of the growth in passenger revenue.) The population of Suffolk and Nassau Counties rely heavily on LIRR service; more than 60 percent of the people who work in Manhattan, and more than 20 percent of those who work in Brooklyn, use the LIRR service.

The freight operating revenues were only \$13 million in 1982. The LIRR interchanges traffic with the Consolidated Rail Corporation (Conrail) and the Boston & Maine, and in 1982 handled slightly more than 22,000 freight cars, a drop of 41% from 1981 levels.

The LIRR operation has a large annual operating deficit, and receives substantial subsidies from the Metropolitan Transportation Authority and the Federal government. In 1981, government transfer payments to the LIRR amounted to \$190 million, or 48 percent of the Carrier's total railway operating revenues.

The last round of labor negotiations between the LIRR and its employees was in 1983. Issues were resolved without a work stoppage, through Presidential Emergency Board Nos. 199 and 201. These were the first boards appointed pursuant to Section 9A of the Railway Labor Act (RLA), an amendment to the RLA, added by the Northeast Rail Service Act of 1981 and applicable to labor disputes between publicly funded and operated commuter railroads and their employees.

B. The Organization

The Brotherhood of Locomotive Engineers (BLE) represents approximately 35,000 locomotive engineers on railroads in the United States. Eleven employees, classified as Assistant Road Foremen of Engines, who are employed by the Carrier, are involved in this dispute.

III. ACTIVITIES OF THE EMERGENCY BOARD

The Board held an Organizational meeting in Washington, D.C. on June 25, 1984. By request of the Board, the parties submitted preliminary statements of position by June 30, 1984. On July 5, 1984, the Board conducted an on-the-record hearing with representatives from the BLE and from the Carrier. The parties presented additional written evidence and oral testimony at this time. The Board met informally with the parties on July 5 and 6 in an attempt to narrow the issues in dispute. The Board met in executive sessions subsequent to the hearing and on July 12, 1984, convened in Washington, D.C. to deliberate on the issues.

IV. HISTORY OF THE DISPUTE

The BLE served its Section 6 Notice to the Carrier on July 19, 1983. The application for mediation was filed December 1, 1983, and the National Mediation Board (NMB) docketed the case as NMB Case No. A-11345 on December 6, 1983.

Mediator Francis J. Dooley commenced mediation on February 9, 1983. Mediation continued until May of 1984. On May 15, 1984, the NMB determined that the parties were deadlocked and proffered arbitration in accordance with Section 5, First, of the Railway Labor Act. The BLE rejected the Board's proffer on May 18, 1984. On May 21, 1984, the Board released the parties from mediation and the statutory 30 day "status quo" period began.

NMB Chairman Walter C. Wallace and Mediator Thomas B. Ingles conducted public interest mediation on June 13, 1984. On June 14, 1984, the BLE requested that President Reagan create an emergency

board pursuant to Section 9A of the Railway Labor Act which governs publicly funded commuter authorities. Emergency Board No. 202 was created by Executive Order No. 12480 on June 20, 1984. Section 9A(c) provides that the parties may make no changes in the conditions out of which the dispute arose for 120 days after the creation of the Board.

V. REPORT AND RECOMMENDATIONS

A. Background

Between 1976 and 1979, ARSA, BRAC, the Brotherhood of Railway Carmen, and the Office and Professional Employees International Union filed applications with the National Mediation Board to represent certain "supervisory" and "professional" employees on the LIRR. The NMB ordered hearings on the issue of whether these employees were subordinate officials under the Railway Labor Act. *The Long Island Rail Road*, 7 NMB No. 164 (1980). At the outset of the proceedings, the LIRR stipulated that certain employees, including Assistant Road Foremen of Engines, were subordinate officials. The Board determined that Assistant Road Foremen of Engines were properly part of the craft or class of Engineers in *The Long Island Rail Road*, 9 NMB No. 155 (1982). The Board conducted a representation election on November 3, 1982. In 10 NMB No. 15(1982) the Board certified that the BLE was the duly designated representative of Assistant Road Foremen of Engines on the LIRR.

The Carrier specifically described the major activities of these employees as follows:

- "1) Supervising commission hour operations of passenger service at assigned terminals to assure proper equipment, crews availability and movement of trains in accordance with schedules.
- 2) Evaluate train and engine performance, making recommendations for improved performance. Review motive power and train operation with Road Foreman for current problems for future changes.
- 3) Conduct train rides for checks on equipment, attendance and performance of crews and equipment. Make calls on employees injuries and/or researching passenger complaints.
- 4) Disruptions in service, i.e., derailments, breakdowns, and accidents to retard normal operation. Act in the capacity of the engineer.
- 5) Conduct investigations, trials, take statement of facts concerning operational problems. Make recommendations in the

issuance of discipline and related administrative duties. Review overtime and claims."

Long Island Rail Road, 9 NMB No. 155 (1982) p. 555.

B. Issues

The BLE Section 6 Notice contained thirty-eight pages of proposals. Meaningful discussion regarding all items in the Section 6 Notice did not take place as a result of the Carrier's bargaining strategy. The Board is convinced that it is inappropriate to make recommendations on issues which were neither the subject of bargaining nor presented in detail to the Board. The Board believes that when the issue of seniority is resolved the other issues will not present a serious obstacle to final agreement.

1. SENIORITY

The LIRR views the issue of seniority as crucial to resolution of this dispute. In the Carrier's view, Assistant Road Foremen of Engines are managerial employees. Presently the railroad hires, assigns, and promotes these employees on the basis of merit. The Carrier claims that it is imperative that it retain these rights in order to ensure the flexibility it needs to run the railroad efficiently. It is the Carrier's position that a seniority system "has no application to managerial and professional employees."

The BLE's position on this issue is that to allow the Carrier to disregard seniority could lead to favoritism and discrimination. The Organization maintains that seniority is "a property right" and a privilege earned with time in service. The BLE does not propose that Assistant Road Foremen of Engines be promoted in order of seniority, nor does it propose that Engineers be promoted to Assistant Road Foremen of Engines *via* the seniority system. However, the Organization does propose that seniority be used in such areas as vacations, shift assignments, overtime, relief days, work locations, and holiday assignments.

The Board views this issue as one which represents a substantial philosophical difference between the parties as to how the concept of seniority should be applied. Assistant Road Foremen of Engines are not universally represented in the railroad industry. The Board finds that these employees sought representation to achieve certain standard union benefits. One of the benefits sought was seniority. The Board understands the reasons why the Carrier desires to retain the right to assign these employees. The BLE does not dispute the Carrier's need to retain certain flexibility in the areas of promotion and hiring.

The evidence of record indicates that the Carrier has recognized the special qualifications of Engineers when promoting into the Assistant Road Foremen of Engines classification, and that the Assistant Road Foremen of Engines, who possess knowledge of the operating rules and the characteristics of the LIRR, are given appropriate preference in the promotion process. This system is of mutual benefit to the employees and the Carrier. The Board finds no reason to recommend different hiring and promotion procedures.

The Board believes that it is possible to design a seniority system that meets the needs of the employees and at the same time grants the Carrier the flexibility it requires. The Board recognizes that employees in the craft or class of Engineers exercise a full and broad range of seniority rights. However, the Organization must recognize that the legitimate needs of the Carrier preclude the same full exercise of seniority by Assistant Road Foremen of Engines. The LIRR should recognize that some elements of security and job stability through a seniority system must be granted to the Assistant Road Foremen of Engines. The Board recommends that the Carrier make, at the least, some accommodation to the concept of seniority in areas including, but not limited to, vacation selection, holiday selection and matters of similar impact.

2. WAGES

Currently, "management" employees on the LIRR are paid under the Hay System. The Carrier proposes to eliminate the Hay System and establish a single base rate of pay. This base rate would equal 90% of the Hay range in existence on March 25, 1983. Employees receiving less than 90% would be raised to the base rate. Employees earning the 90% rate would continue to receive the same salary. Employees earning more than the 90% rate would be "red circled" until the base rate reaches their actual rate of pay. New hires would be subject to a wage progression of 80%-85% — 90%-95% every 240 days until the full rate of pay is attained.

In October 1983, the LIRR offered a 7% wage increase to all employees who had not received a Hay System increase in 1983. The BLE and the Assistant Road Foremen of Engines rejected this increase because two of the Assistant Road Foremen of Engines would not qualify for this increase.

The Organization proposes that all Assistant Road Foremen of Engines be paid at the same rate as the Chief Train Dispatchers who currently are paid a base rate of \$47,879 annually. This would represent an increase of approximately \$9,500 annually for the average Assistant Road Foreman.

This Board endorses the LIRR's proposal to discontinue the use of the Hay System and recommends the establishment of a system of pay

that reflects the traditional bases of compensation enjoyed by union-represented employees. The Board recommends that the BLE reconsider its proposal that the Assistant Road Foreman of Engines be paid at the same rate as the Chief Train Dispatcher. The Board also recommends that the Carrier review its wage proposals to ensure that no employee suffers a reduction in compensation. The Board is convinced that the parties' differences on the wage issue will be settled when the seniority issue is resolved.

3. MORATORIUM PROVISIONS

The Board recommends that these agreements run concurrently with existing agreements on the property.

VI. CONCLUSION

The Carrier has treated the issue of seniority in this dispute in the same manner as it did in the disputes involving BRAC and ARSA. The Board finds that there is a significant difference between this dispute and the disputes addressed in the Report of Emergency Board No. 203. Assistant Road Foremen of Engines is a classification that is relatively unique among unionized employees. Therefore, a standard seniority system is not appropriate in this case. The Board is encouraged by the fact that the BLE recognizes the Carrier's need for flexibility in certain areas, such as hiring and promotion. The Board's recommendation that the Carrier's need for flexibility be balanced with the union's need for job security reflects the Board's conviction that the issue of seniority should not be responsible for the shut-down of an important commuter service such as The Long Island Rail Road.

The Board wishes to give special recognition posthumously to Mediator Francis J. Dooley, who exercised devoted and dedicated efforts in this dispute and in previous disputes involving these parties.

Respectfully,

RICHARD R. KASHER, Chairman.

MARGERY F. GOOTNICK, Member.

RODNEY E. DENNIS, Member.

EXECUTIVE ORDER

12480

ESTABLISHING AN EMERGENCY BOARD TO INVESTIGATE A DISPUTE
BETWEEN THE LONG ISLAND RAIL ROAD AND THE BROTHERHOOD
OF LOCOMOTIVE ENGINEERS

A dispute exists between The Long Island Rail Road and the Brotherhood of Locomotive Engineers representing employees of The Long Island Rail Road.

The dispute has not heretofore been adjusted under the provisions of the Railway Labor Act, as amended ("the Act").

A party empowered by the Act has requested that the President establish an emergency board pursuant to Section 9A of the Act.

Section 9A(c) of the Act provides that the President, upon such a request, shall appoint an emergency board to investigate and report on the dispute.

NOW, THEREFORE, by the authority vested in me by Section 9A of the Act, as amended (45 U.S.C. 159a), it is hereby ordered as follows:

Section 1. *Establishment of Board.* There is established, effective June 20, 1984, a board of three members to be appointed by the President to investigate this dispute. No member shall be pecuniarily or otherwise interested in any Organization of railroad employees or any Carrier. The board shall perform its functions subject to the availability of funds.

Section 2. *Report.* The board shall report its findings to the President with respect to the dispute within 30 days after the date of its creation.

Section 3. *Maintaining Conditions.* As provided by Section 9A(c) of the Act, as amended, from the date of the creation of the board, and for 120 days thereafter, no change, except by agreement of the parties, shall be made by the Carrier or the employees in the conditions out of which the dispute arose.

Section 4. *Expiration.* The board shall terminate upon the submission of the report provided for in Section 2 of this Order.

THE WHITE HOUSE,

June 20, 1984.