

Award No. 13871
Docket No. TE-13064

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Harold M. Weston, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly The Order of Railroad Telegraphers)

THE MONONGAHELA RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Monongahela Railway, with respect to:

Time claim of Extra Operator Naida F. Hunter, dated June 11, 1960 — allow 8 hours time, FA Tower, 2nd Trick, 3:45 P.M. to 11:45 P.M., June 11, 1960. Scope Rule of Agreement, effective August 1, 1947, violated by officials of the Carrier directing Block Operator Lorraine Morris to place train order and clearance card on Train Register Book in Trainmen's Room for later delivery to the crew of Coal Train 406-418-409 North, called for 5:00 P.M. In support of the claim we quote Article IV (c), (e) and (a) of the Telegraphers' Agreement. (660TE) (M-755).

EMPLOYEES' STATEMENT OF FACTS:

The facts in this dispute are better stated in the following correspondence exchanged by the parties on the property prior to appeal to this Board:

"Morgantown, West Va.
August 12, 1960

Mr. W. C. Westcoat, Supt. Frt. Trans.
The Monongahela Railway Company
Union Station Building
Brownsville, Pa.

Dear Sir:

The undersigned will appreciate a conference date at your convenience for the purpose of discussing the following claim of Extra Operator Naida F. Hunter under date of June 11, 1960.

Allow 8 hours' time, FA Tower, 2nd Trick, 3:45 P.M. to 11:45 P.M., June 11, 1960. Scope Rule of Agreement effective August 1, 1947, violated by officials of the Carrier directing Block Operator Lorraine Morris to place train

OPINION OF BOARD: Petitioner complains that the first trick telegrapher is now being required to place train orders in an envelope and leave them attached to the train register book for the crews to pick up later. According to Petitioner, that requirement is violative of the Telegraphers' Agreement, since the Scope Rule reserves to telegraphers the right to make personal delivery of train orders.

There is nothing in the Agreement that specifically deals with the point. The Agreement does not contain a standard train order rule and its Scope Rule, which reads as follows, is of a general nature:

"These Rules and Rates of Pay shall constitute an Agreement between the Monongahela Railway Company and its Block Operators, represented by The Order of Railroad Telegraphers, and shall govern the hours of service and working conditions of the said employees in the positions classified herein."

Petitioner directs our attention to Carrier's operating rules and, specifically, their provision that one of the block operators' functions is to deliver messages personally to their addressees. The difficulty with this line of reasoning is that operating rules may be cancelled, amended or suspended at any time at management's pleasure and accordingly do not attain the dignity or effect of a mutual understanding or agreement and, in and of themselves, do not establish a consistent past practice or custom, although they can be useful to bolster a claim where at least some additional evidence of past practice has been presented. The record in the instant case is barren of such proof and since the burden of establishing all essential elements of the claim rests on Petitioner, the claim must be denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of September 1965.