

Award No. 14018
Docket No. TE-11848

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

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

THE MONONGAHELA RAILWAY COMPANY

STATEMENT OF CLAIM: Time claims of Block Operator Evelyn G. Walters dated November 3, 17, 24; December 8, 15, 22 and 29, 1957, requesting one eight-hour day, each date, at operator's rate, account of work being performed at South Brownsville Yard Office by others than those covered by ORT Agreement. (M-558)

JOINT STATEMENT OF FACTS: On the dates here involved there was no operator on duty at "HU" Tower from 11:45 P.M. Saturday until 7:45 A.M. Sunday.

On November 3, 1957, a 2:45 P.M. DC-Maidsville crew went off duty at 2:25 A.M., and an 8:00 P.M. coal train crew went off duty at 3:05 A.M. On November 17, a 5:30 P.M. Maidsville Turn went off duty at 12:25 A.M., and a 7:00 P.M. coal train crew went off duty at 1:00 A.M. On November 24, an 8:45 P.M. Maidsville Turn went off duty at 2:25 A.M. and an 11:59 P.M. coal train crew went off duty at 6:45 A.M. On December 8, 1957, a 5:30 P.M. Maidsville Turn went off duty at 12:25 A.M. and a 9:30 P.M. Maidsville Turn went off duty at 7:00 A.M. On December 15, 1957, a 6:15 P.M. coal train crew went off duty at 2:10 A.M. On December 22, a 9:30 P.M. coal train crew went off duty at 4:00 A.M. and on December 29, a 6:30 P.M. coal train crew went off duty at 1:20 A.M.

In each instance the off-duty time was reported to the Yardmaster at South Brownsville by the crews and the operator going on duty at 7:45 A.M. on Sunday would call the Yardmaster at South Brownsville and obtain this information which was then transmitted to the Train Dispatcher. Had an operating been working at "HU" Tower at the time these crews cleared on the above dates, the crews would have notified the operator of the time they cleared and he in turn would have transmitted this information to the Train Dispatcher.

In addition to crews reporting their clearance time to operators—all crews departing from or clearing at South Brownsville are required to register their time on and off duty on the register sheet in the Yard Office at South Brownsville.

Claimant was the senior available extra operator on each of the dates here involved and filed claim for eight (8) hours, each date account of work being performed at South Brownsville Yard Office by others than those covered by The Order of Railroad Telegraphers' Agreement.

The claims were denied by the Superintendent Freight Transportation with the advice that the reporting of crew clearances has never been defined as work that must be performed exclusively by members under the Telegraphers' Agreement. The claims were then progressed in accordance with the agreement up to the Director of Personnel, the highest officer designated by the Carrier to whom appeals can be made, and were denied by him on the basis that there is no provision in the Telegraphers' Agreement which requires that information reported to the Train Dispatcher be received from a crew rather than from some other source.

POSITION OF EMPLOYEES: It is the position of the Employees that the Carrier violated the agreement between the parties when it permitted or required employees other than covered by the Agreement to perform the duties of block operator on the dates specified. A substantial background of the dispute is contained in the following correspondence exchanged between Miss Sarah Ankney, Local Chairman for the Employees, Mr. W. C. Westcoat, Superintendent Freight Transportation and Mr. C. H. Siebart, Superintendent, of the Carrier; and between General Chairman A. Swilling for the Employees and Mr. R. E. Black, Director of Personnel for the Carrier, and his successor, Mr. W. J. Petrie.

ANKNEY TO WESTCOAT, MARCH 11, 1958

"The undersigned will appreciate a conference at your convenience for the purpose of discussing an appeal to your decision in connection with time claims of Extra Operator Evelyn G. Walters under dates of November 3, 17, 24, December 8, 15, 22 and 29, 1957, claims being made account of work being performed at South Brownsville Yard Office by others than those covered by Scope Rule of ORT Agreement.

Committee cannot agree to the last paragraph of your letter under date of March 5, 1958, in which you state:

'We are unable to develop anything whereby the work complained of was in violation of the Agreement. The claims are therefore denied.'

The record shows that under date of November 3, 1957—Engine 421-420 Conductor Shaw was called for 2:45 P.M. Nov. 3, 1957 and cleared at 2:25 A.M. Engine 404-405-419, Conductor Gallagher was called for 8:00 P.M. and cleared at 3:05 A.M. to the dispatcher.

The record under date of November 17, 1957 shows—Engine 405-424-404 Conductor Bevard was called for 5:30 P.M. and cleared at 12:25 A.M. Engine 414-410-420 Conductor Gallagher was called for 7:00 P.M. and cleared at 1:00 A.M.

The record under date of November 24, 1957 shows—Engine 402-401 Conductor Shaffer was called for 8:45 P.M., Nov. 23, 1957

more, if employes worked as robots, or always according to a set pattern, or according to their idea of the written word, there would be no occasion for having supervision present to oversee the work and to give directions and instructions as to the manner and method of performing the work, as was done in this case."

AWARD 8327

(Telegraphers v. Maine Central Railroad Company)

This award involved a claim that carrier violated the agreement when it required agent-telegrapher to leave train orders and clearance cards pinned to train register books to be picked up the following morning by the conductor of a crew going on duty prior to regular assigned hours of the agent-telegrapher.

The claim was denied, and the following excerpt is taken from the Opinion of the Board which carrier feels is somewhat analogous to the situation here in dispute:

"Since no employe 'other than covered' handled the train orders in question, it seems too clear for argument that the Train Order Rule has not been violated. To hold that the Rule requires the Carrier to permit a telegrapher to do work that the carrier does not want done, is not only to twist and distort the plain words of the Train Order Rule, but also to ignore the fundamental principle that it is for the carrier alone to decide what work will be done. If we should so hold, then I suppose it would follow that where a telegrapher has in the past made 6 copies of each train order he is entitled in the future to make 6 copies, even though the carrier only requires 4 copies."

Carrier has shown that no violation of the Telegraphers' Agreement occurred by reason of an operator calling a Yardmaster to obtain a clearance time from the crew register sheet of crews going off duty at a time when no operator was on duty; that Management has the right to defer work and have it performed at a later time or dispense with work it does not want done by anyone, and that this position is supported by Awards of the Third Division.

Carrier holds the claim to be without substance, and requests it be denied.

OPINION OF BOARD: This dispute was progressed to the Board as a joint submission of the parties. The record contains a joint statement of facts reading as follows:

"On the dates here involved there was no operator on duty at 'HU' Tower from 11:45 P. M. Saturday until 7:45 A. M. Sunday.

On November 3, 1957, a 2:45 P. M. DC-Maidsville crew went off duty at 2:25 A. M., and an 8:00 P. M. coal train crew went off duty at 3:05 A. M. On November 17, a 5:30 P. M. Maidsville Turn went off duty at 12:25 A. M., and a 7:00 P. M. coal train crew went off duty at 1:00 A. M. On November 24, an 8:45 P. M. Maidsville Turn went off duty at 2:25 A. M. and an 11:59 P. M. coal train crew went off duty at 6:45 A. M. On December 8, 1957, a 5:30 P. M. Maids-

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In each instance the off-duty time was reported to the Yardmaster at South Brownsville by the crews and the operator going on duty at 7:45 A. M. on Sunday would call the Yardmaster at South Brownsville and obtain this information which was then transmitted to the Train Dispatcher. Had an operator been working at 'HU' Tower at the time these crews cleared on the above dates, the crews would have notified the operator of the time they cleared and he in turn would have transmitted this information to the Train Dispatcher.

In addition to crews reporting their clearance time to operators—all crews departing from or clearing at South Brownsville are required to register their time on and off duty on the register sheet in the Yard Office at South Brownsville.

Claimant was the senior available extra operator on each of the dates here involved and filed claim for eight (8) hours, each date account of work being performed at South Brownsville Yard Office by other than those covered by The Order of Railroad Telegraphers' Agreement.

The claims were denied by the Superintendent Freight Transportation with the advice that the reporting of crew clearances has never been defined as work that must be performed exclusively by employees under the Telegraphers' Agreement. The claims were then progressed in accordance with the agreement up to the Director of Personnel, the highest officer designated by the Carrier to whom appeals can be made and were denied by him on the basis that there is no provision in the Telegraphers' Agreement which requires that information reported to the Train Dispatcher be received from a crew rather than from some other source."

Insofar as material here, those facts establish that during the time no third trick operator was on duty, a yardmaster received tie-up time reports directly from train crews in the yard; that subsequently the first trick operator obtained the information contained therein by telephoning the yardmaster; that the first trick operator then transmitted the information to the train dispatcher.

The facts and the other evidence of record also establish that when a third trick operator was employed and on duty, train crews filed these reports directly with that operator, thus showing, at least by implication, that this method was the practice.

The basic question, therefore, is whether such practice conferred an exclusive contractual right upon employees covered by the Scope Rule of the Telegraphers' Agreement to receive such reports, thus barring others (yardmaster here) from participation in that work.

The Board has taken note of the precedents and authorities cited by both parties as applicable to the narrow issue presented. None has been found

controlling. Here the yardmaster performed no service other than that which was, and is, an essential and necessary part of a yardmaster's duties—the receiving of reports of train crews yarding their trains. There is no rule or practice evident on this property which would bar the yardmaster from communicating directly, by telephone or other means, with such crews, whether or not an operator was on duty. Accordingly, it cannot be held that the practice of receiving the reports here involved by operators when on duty grew into an exclusive work right barring the receipt of such reports by the yardmaster, so long as the latter's actions did not encompass or infringe upon that totality of work which clearly is reserved for exclusive performance by members of the Telegrapher craft—the receipt and transmittal of messages of record.

In view of the foregoing, the Board finds, under the factual circumstances prevailing here, no violation of the Scope Rule of the Agreement in evidence.

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 17th day of December 1965.