

Award No. 14146
Docket No. TE-11851

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

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

THE MONONGAHELA RAILWAY COMPANY

STATEMENT OF CLAIM: Time claim of Block Operator Margaret H. Collins dated January 1, 1958, requesting holiday penalty time, first trick SX Tower, account trick being closed and work being performed by others than those covered by Scope Rule of ORT Agreement. (M-579)

JOINT STATEMENT OF FACTS: On January 1, 1958, (New Year's Day) SX Train Order Office was blanked on all tricks from 7:45 A. M., January 1, 1958 to 7:45 A. M., January 2, 1958. Train movements on the Scotts Run Branch are made by permission through SX Train Order Office when operators are on duty. A Maidsville Yard crew, on duty at 10:30 P. M., December 3, 1957, had an excessive amount of work to do and it was decided that since this crew would not go off duty at Scotts Run enginehouse prior to 7:45 A. M. on January 1, 1958, they were instructed by the yardmaster at Maidsville to go to SX Tower and get permission from the operator for movement of their engine from Scotts Run Junction to the enginehouse before the operator went off duty at 7:45 A. M. The crew received their permission and continued on working after the operator had gone off duty, clearing at 8:30 A. M. on January 1, 1958, and reported their clearance time to the yardmaster at Maidsville, which information is necessary in order to mark up the crew board. The operator coming on duty at 7:45 A. M. on January 2, 1958, called the yardmaster and obtained the clearance time from him.

Claimant who held a regular assignment as operator at SX Tower from 7:45 A. M. to 3:45 P. M., would have worked this trick on January 1, 1958, had the office not been blanked on that date, and filed claim for eight (8) hours' penalty time account work being performed by others not covered by Scope Rule of The Order of Railroad Telegraphers' agreement.

The claim was denied by the Superintendent-Freight Transportation, with the advice that Carrier has the right to blank positions not needed and assign what little work that might be required to other tricks or offices and that reporting of crew clearances was not work accruing exclusively to employees under the Telegraphers' agreement. The claim was 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 was denied by

It is a well established principle, consistently recognized and adhered to by this, as well as the other Boards of the National Railroad Adjustment Board, that the right to work is not the equivalent of work performed and therefore time claimed but not actually worked cannot be treated at the over-time rate unless the agreement specifically so provides. There is no such provision in the agreement here involved; therefore, a penalty payment in this claim is not warranted in the event of a finding by the Board that the agreement was violated.

II. AWARDS OF THE NATIONAL RAILROAD ADJUSTMENT BOARD SUPPORT THE POSITION OF THE CARRIER.

Carrier wishes to direct the attention of the Board to the following awards of the Third Division, National Railroad Adjustment Board, which, although not precisely in point with the issue here in dispute, do propound principles somewhat similar to the situation existing in the instant claim, which Carrier feels supports their position and fully justifies a denial of the Employees' claim.

AWARD 1166

This award involved a claim of the General Committee of the Order of Railroad Telegraphers that Carrier was in violation of their agreement in requiring an operator to place train orders and clearance cards in a box outside the office to be picked up by train crews after the operator had gone off duty.

Carrier has shown there is no provision in the Telegraphers' Agreement which requires that written permission to crews operating on the Scotts Run Branch can only be issued at the time the permission is effective or is to be executed, nor is there any rule which requires that information with respect to crew clearances must be received by the operator from a crew rather than from some other source, and that the awards herein referred to refute the contention of the employees.

Carrier submits the claim to be without merit and requests it be denied.

OPINION OF BOARD: The dispute presents the identical issue under substantially the same factual circumstances as was considered and decided by the Board in Award 14018 involving these same parties.

Accordingly, Award 14018 is held to be controlling here. The claim, therefore, will 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 11th day of February 1966.