

Award No. 14147
Docket No. TE-11852

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 claims of Block Operator Betty A. Chamberlain dated December 25, 1957 and January 1, 1958, requesting holiday penalty time, first trick, HU Tower, account of work being performed by others not covered by Scope Rule of the ORT Agreement. (M-591)

JOINT STATEMENT OF FACTS: On December 25, 1957 (Christmas Day), and January 1, 1958 (New Year's Day), HU Train Order Office was blanked from 7:45 A.M. until 11:45 P.M. On December 25, 1957, the 7:30 A.M. Brownsville Yard Crew went off duty at 2:00 P.M. On January 1, 1958, the 6:30 A.M. Brownsville Yard Crew went off duty at 2:00 P.M. and a 4:00 A.M. Maidsville Turn went off duty at 9:45 A.M. In each instance the off-duty time was reported to the Yardmaster by the crews and this information subsequently obtained by the Train Dispatcher from the operator at HU Tower coming on duty at 11:45 P.M. Had an operator been working at the time these crews cleared, they would have notified the operator the time they cleared, who, 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, who held a regular assignment as Operator at HU Tower from 7:45 A.M. to 3:45 P.M., would have worked this trick on each of these dates had the office not been blanked, and filed claim for eight (8) hours' penalty time account of 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 the reporting of crew clearances has never been defined as work that must be performed exclusively by 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 him on the basis that there is no provision in the Telegraphers' Agreement

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: 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.