

Award No. 14148

Docket No. TE-11853

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 Sarah A. Ankney, dated January 1, 1958, requesting holiday penalty time, third trick SX Tower, account work being performed by others not covered by the Scope Rule of the ORT Agreement during the hours the trick was closed. (M-593)

JOINT STATEMENT OF FACTS: On January 1, 1958 (New Year's Day) SX Tower 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. On January 2, 1958, due to there being no operator on duty at SX Tower until 7:45 A.M., the 6:30 A.M. and the 7:30 A.M. Maidsville Yard Crews were instructed by the Yardmaster to flag from the Enginehouse to the North Wye Switch at Randall on the Scotts Run Branch under Special Instruction S26R of Time Table, effective October 27, 1957, reading as follows:

"Train movements on the Scotts Run Branch including either leg of Wye, will be handled on written instructions of Operator, SX Train Order Office; Conductors and Enginemen must each have a copy of these instructions. When no operator is on duty, make these movements under flag protection."

Claimant, who held a regular assignment as operator at SX Tower from 11:45 P.M. to 7:45 A.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 crews may be required to protect their movements on the Scotts Run Branch by flagging when SX Tower is closed, and that such requirement under these circumstances was not in violation of 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 no work under the Scope of the Telegraphers' Agree-

tor on duty at SX Tower, or by flagging under a carrier rule when no operator is on duty, is a right vested solely in management, and in nowise circumvents the Telegraphers' Agreement, and that Carrier's position is supported by Awards of the National Railroad Adjustment Board.

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

OPINION OF BOARD: This 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.