Award No. 14145
Docket No. TE-11849

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 J. M. Hill, dated December 21, 1957, requesting eight (8) hours' pay account of not being called the night of December 7, 1957, for "SX" Tower. Yard Engine 409, Conductor Hadden was still in yard when tower was closed. He cleared at 1:40 A. M., December 8, 1957. (M-559)

JOINT STATEMENT OF FACTS: "SX" Train Order Office was closed from 11:45 P. M., December 7, 1957, to 7:45 A. M., December 8, 1957. Train movements on the Scotts Run Branch are made by permission through "SX" Train Order Office when operators are on duty. On December 7, 1957, the 3:45 P. M. Maidsville Yard Crew 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 11:45 P. M., 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 11:45 P. M. The crew received their permission and continued on working after the operator had gone off duty, clearing at 1:40 A. M. on December 8, 1957, and reported their clearance time to the Yardmaster at Maidsville, which information is necessary in order to make up the crew board. The operator coming on duty at 7:45 A. M. on December 8, 1957, called the Yardmaster and obtained the clearance time and then transmitted this information to the Train Dispatcher.

Claimant was the senior available extra operator on the date here involved and filed claim for eight (8) hours' pay account "SX" Tower being closed and yard crew still working in the yard.

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 employes 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 crews work under the jurisdiction of the Yardmaster, and that it is proper to have them report any informa-

telephone offices where an operator is employed and is available or can be promptly notified, except in an emergency, in which case the Operator shall be notified and paid a call."

The train order was not handled by anyone other than the telegrapher at Astoria and was executed in the performance of their duties between Seaside and Astoria at a time when there was no telegrapher on duty at Seaside.

The claim was denied, and in its Opinion the Board held, in part, as follows:

"* * * It is enough to add that the conduct of the Carrier in the case before us appears to be substantially within the clear and unambiguous terms of Rule 23(a). * * *"

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 employes.

Carrier submits the claim to be without merit, and 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 Employes involved in this dispute are respectively Carrier and Employes 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.