

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on Chicago, Milwaukee, St. Paul and Pacific Railroad:

(1) That Rule 8 (a) of the Telegraphers' Agreement was violated by the Carrier when the long established regular assignment of hours of the agent at Algona, Iowa, 8:00 A. M. to 4:00 P. M., daily except Sundays, was, to avoid possible overtime claims, August 30, 1941, to September 26, 1941, both inclusive, changed to 6:00 A. M. to 2:00 P. M., only to be restored to the original assignment of hours on September 27, 1941, and

(2) That Agent G. C. Scobee at Algona be allowed a call under Rule 9 (c) of said Agreement for each day August 30, September 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25 and 26, 1941, based upon this improper temporary change in his assigned hours.

EMPLOYES' STATEMENT OF FACTS: An agreement bearing date May 1, 1939, as to rules of working conditions and December 1, 1941, as to rates of pay, is in effect between the parties to this dispute.

The agent's position at Algona, Iowa, is covered by said agreement, and is a two shift office.

Prior to August 30, 1941, and for many years, the regular assigned hours of the agent at Algona was 8:00 A. M. to 4:00 P. M., with no meal period allowed.

On August 28, 1941, the Carrier served notice on the agent at Algona that effective August 30, 1941, his hours of assignment were changed to 6:00 A. M. to 2:00 P. M. On September 25, 1941, the Carrier served further notice on the agent at Algona that effective September 27, 1941, his hours of assignment were changed to 8:00 A. M. to 4:00 P. M., as originally assigned.

Rule 8 (a) and (c) of the Telegraphers' Agreement provide:

"(a) The starting time for all station agents will be between 6:00 and 8:00 A. M.; for all other employees at one shift offices it will be between 6:00 and 8:00 A. M. or P. M., except the starting time may be otherwise arranged by agreement between representatives of the

because the organization's concern at the time the rule was negotiated was by reason of the starting time being changed at different stations for only a period of two or three days. The only thought in negotiating the language as contained in the above quotation was that if a change was made in the assigned hours of an employe within the scope of the Telegraphers' Schedule it would be for more than two weeks.

Certainly the Board members will realize and the organization should agree that at any time the management feels it is necessary to change the assigned hours of an employe within the scope of the Telegraphers' Schedule such change may be made by complying with paragraph (c) of Rule 8 by giving the employe affected a 36 hour advance notice and for the organization to argue differently is not consistent with the position they took at the time the above quoted language was agreed to.

The change in starting time was effective August 30 and continued up to and inclusive of September 26, 1941. This period of time was considerably in excess of two weeks, therefore, the Board members will realize that there could not possibly be any violation of current Telegraphers' Schedule Rule 8.

In view of the agent's assigned hours being 6:00 A. M. to 2:00 P. M. during the period of time in question certainly the organization cannot consistently argue that Rule 9 (c) would be applicable because Rule 9 (c) reading:

"Employes notified or called to perform work not continuous with the regular work period will be allowed a minimum of three (3) hours for two (2) hours' work or less, and if held on duty in excess of two (2) hours, time and one-half will be allowed on the minute basis."

contemplated work being performed in advance of or following the regularly assigned hours. Where the agent at Algona was regularly assigned 6:00 A. M. to 2:00 P. M. during the period of time in question the payment as applied, i. e. eight hours at the pro rata rate would be proper and there would be no additional allowances to Agent Scobee.

It is the carrier's position there is absolutely no merit in this claim and the same should be declined.

OPINION OF BOARD: For many years prior to August 30, 1941, the regular assigned hours of the agent at Algona, Iowa were 8:00 A. M. to 4:00 P. M., no meal period allowed. On August 30, 1941, the assigned hours were changed to 6:00 A. M. to 2:00 P. M. On September 27, 1941, the assigned hours were changed back as originally assigned. Claimant contends that this was in violation of that part of the starting time rule of the Telegraphers' Agreement, Rule 8 (a), providing that "the starting time at any office will not be changed for the purpose of taking care of a temporary condition of two weeks or less duration."

The record shows that the Carrier undertook extensive track repairs in the vicinity of Algona. Two extra section gangs were put on, one doing preparatory work of three or four days' duration and the other following up ten days later and completing the work within a period of eight to ten days. It was necessary for the agent to obtain train line-ups for these gangs at 6:00 A. M. to protect them in the movement of trains. The first gang required train line-ups on September 3, 4 and 5. The second gang required them on September 16, 17, 18, 19, 20, 22, 23 and 24. It is not disputed that a temporary condition existed at Algona within the meaning of the quoted portion of the rule. The decisive question is whether the temporary condition was one of two weeks or less duration, or whether, as contended by the Carrier, it was one in excess of two weeks.

We think that the temporary condition referred to in the rule must exist continuously for two weeks to warrant a change in starting time. To permit

the tacking of a number of disconnected temporary conditions to make a single temporary condition of two weeks' duration within the meaning of the rule, would defeat the very purpose of the rule.

Carrier contends that its recitation of facts shows that the temporary condition existed during the whole period that the agent's assignment was changed. The Carrier, however, failed to produce any evidence to sustain the correctness of that assertion. The Carrier also urges that it has the right to change the starting time within the limits presented in the rule without giving any reason for so doing. While this is ordinarily a prerogative of management, the rule limits the changing of the starting time where a temporary condition exists, to temporary conditions in excess of two weeks' duration. Both parties agree that a temporary condition existed at Algona. After an examination of the record, we are convinced that there was not a temporary condition existing at that point in excess of two weeks' duration within the meaning of Rule 8 (a) of the current Agreement.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon and upon the whole record and all the evidence, finds and holds:

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 Carrier violated the current Agreement as the claimant contends.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 6th day of November, 1944.