

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES**

THE BALTIMORE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: "Claim of System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, that Tallyman H. J. Herzog and Truckers S. Mormino and J. Shannon, and others affected at Rochester, N. Y., be paid punitive time for two (2) hours and fifteen (15) minutes for each Monday and the day following each holiday from April 1, 1936, to November 8, 1937."

STATEMENT OF FACTS: "Prior to 1934 the starting time of regular assigned platform forces at Rochester, N. Y., Freight Station was 8:15 A. M. During the year 1934, the starting time of one regular assigned gang, consisting of one tallyman and two truckers, was changed to 6:00 A. M. on Mondays and days following holidays, and 8:15 A. M. on all other days of the week. In April, 1936, the Clerks' Committee protested the starting time of this gang as a result of bulletin posted about that time, advertising vacancy of a trucker position in the gang, their contention being that the starting time of this gang should be the same hour each day of the week. On November 8, 1937, the starting time of this gang was changed to 8:15 A. M., the same as other regularly assigned platform forces at that point. Extra men were used to take care of the work prior to 8:15 A. M. on Mondays and days following holidays."

POSITION OF EMPLOYEES: "Committee contends that Rule No. 9 reading as follows:

'Regular assignments shall have a fixed starting time and the regular starting time shall not be permanently changed without at least thirty-six (36) hours' notice to the employees affected.'

provides for a fixed starting time, and means the same time each day: That Rule No. 6 reading as follows:

'Employees will not be required to suspend work during regular hours to absorb overtime.'

forbids these employees being required to suspend work at 3:00 P. M. instead of 5:15 P. M., and that Rule No. 8 reading as follows:

'(a) Except as provided in Paragraph (b) employees notified or called to perform work not continuous with, before, or after the regular work period or on Sundays and specified holidays shall 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.'

as a result more business was obtained, thereby providing more work for the employees. We, therefore, request your honorable board to deny the claim."

OPINION OF BOARD: From the record before this Division it is evident that only in exceptional instances had the starting time for employees coming under the Clerks' Agreement been other than the same time each day of the assignment, and that since the change from a uniform time at Rochester, N. Y. on April 16, 1934, which occasioned protest resulting in this dispute, no assignments with a different starting time on any day of the assignment existed, other than those covered by this dispute, except as agreed to by the employees. These circumstances, in the opinion of the Third Division, establish that the starting time as referred to in Rule 9 means the same time each day of the assignment.

However, in view of the findings and the fact that the matter complained of in this dispute was corrected in November 1937, without establishing a precedent by reason thereof claims for retroactive compensation are denied.

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 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 starting time referred to in Rule 9 means the same time each day of the assignment.

AWARD

Claim sustained with respect to the proper interpretation or application of Rule 9; claims for compensation denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 3rd day of October, 1939.