

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Ernest M. Tipton, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE CHICAGO, ROCK ISLAND AND PACIFIC
RAILWAY COMPANY**

(Frank O. Lowden, James E. Gorman, Joseph B. Fleming, Trustees.)

STATEMENT OF CLAIM: "Claim of the General Committee of the Order of Railroad Telegraphers, Chicago, Rock Island and Pacific Railway that all first trick towermen in the Chicago area were, on each day, May 1st to September 30, inclusive, 1939, required to begin their respective day's assignments one hour in advance of the earliest starting time permitted by rule 4-(f) of the Telegraphers' Agreement, for the first trick and, that each of these employes are therefore entitled to and shall be paid a call under the Call Rule of Said Agreement for each day, May 1st to September 30th, inclusive, 1939."

EMPLOYES' STATEMENT OF FACTS: "It is the contention of the General Committee of the Order of Railroad Telegraphers that there is an agreement between the Chicago, Rock Island and Pacific Railway and the Order of Railroad Telegraphers bearing date of January 1, 1928, covering wages and working conditions of the Classes of employes shown in the scope rule thereof, copies of which have been filed with the Board.

"In the Chicago terminal district there are eleven towers in each of which three shifts or tricks are worked, the first tricks having a starting time at or between seven and eight o'clock A. M., as per Article 4-(f) of the Agreement, prior to May 1, 1939, in the Chicago district, the carrier ordered a change in working hours of towermen, bringing the first trick employes on duty at 7:00 A. M., Day-Light-Saving time or 6:00 A. M., Central Standard Time, and continued this arrangement until September 30, 1939, despite protests and claims by the employes."

POSITION OF EMPLOYES: "The Committee takes the position that the agreement between the carrier and the telegraphers, Article 4-(f) of which reads:

'Where one shift is worked (except as covered by section "g" the time to begin work will be between six (6) and eight-thirty (8:30) A. M. or P. M. Where two shifts are worked, they can be started at any time necessary to cover the service. Where three or more shifts are worked, the first shift will commence at or between seven (7) and eight (8) A. M. The regular starting time shall not be changed without at least thirty-six (36) hours notice to the employes affected.' (Emphasis supplied.)

Standard Central time to bring one of the two first trick towermen at Polk St. as well as the first trick towerman at Englewood on duty one hour earlier to take care of the traffic———.'

"Mr. Kay thus recognized the operating necessity of making the change.

"No further contentions were made by the telegraphers until some time in March 1939.

"Beginning in 1921 the management followed the practice of assigning the operators in towers in the Chicago District to tours of duty to conform with the movement of trains in the summer time, which are governed by daylight saving time. Both the management and the employes understood the practice and contention of the management. Both understood the acquiescence of the employes in this contention. Then came the schedule of 1924 and again the schedule of 1928. Both schedules contain identical language insofar as this question is concerned. The practice initiated in 1921 was in existence during the life of the schedule of 1924 and has been in existence continually during the life of the contract of January 1, 1928. During all these years the contracts have received the particular construction that during the daylight saving time period in Chicago the starting time of first trick operators in the towers should conform to the requirements of the service, the requirements of the service being governed by daylight saving time.

"In this connection we desire to call the Board's attention to Eastern Train Service Board of Adjustment Dockets 103 and 161, likewise Award 388, Docket 390, of the Second Division, National Railroad Adjustment Board."

OPINION OF BOARD: In the Chicago Terminal District there are eleven towers in each of which three shifts or tricks are worked, the first tricks having a starting time at or between seven and eight o'clock A. M. as per Article 4-(f) of the Agreement. Prior to May 1, 1939, in the Chicago District, the carrier ordered a change in working hours of towermen, bringing the first trick employes on duty at 7:00 A. M., Daylight Saving Time or 6:00 A. M. Central Standard Time, and continued this arrangement until September 30, 1939.

It is the position of the Committee that Article 4-(f) of the Agreement between the parties is based upon Standard time as recognized by the United States Government, and that any change to be made in such regularly established basis of time as set forth in Article 4-(f) shall not be made except by agreement between the parties; that the action of the carrier in the instant case in unilaterally establishing a starting time other than that provided in Article 4-(f) was in violation of the Telegraphers' Agreement.

Carrier contends that the assignment at 7:00 A. M. Daylight Saving Time is in line with Article 4-(f) of the Telegraphers' Agreement.

There is nothing in the agreement to indicate whether Standard Time or Daylight Saving Time, as observed in certain cities, should control. On this point the rules are silent.

The record shows that the city of Chicago enacted an ordinance in 1921 legalizing Daylight Saving Time, from the last Sunday (midnight) in April to the last Sunday (midnight) in September. The record, also, shows that levermen in Chicago have worked from 1921 to 1939 under Daylight Saving Time without complaint. The first complaint was made in the year 1939.

The Board recognizes the rule that past violations of an agreement do not revise an agreement; but on the other hand, if an agreement is susceptible of two different meanings then what the parties have done under it would be the proper interpretation of the rule.

Since Article 4-(f) of the agreement is susceptible of the construction that only Standard Time is meant and is also susceptible of the construction that Daylight Saving Time is meant in the communities where it is observed, then the practice of the parties would be controlling. It follows there was no violation of the 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 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 there was no violation of the agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 6th day of December, 1940.