

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

Lloyd K. Garrison, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY

DISPUTE.—

"Claim of T. J. Hankins, Agent, Goodland, Kansas, for monetary loss actually sustained, as shown by the records, account express commission rate on L. C. L., express business reduced from 10 per cent to 6½ per cent from June 1, 1930, to February 28, 1934, inclusive."

FINDINGS.—The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier and the employee involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

As a result of a deadlock, Lloyd K. Garrison was called in as Referee to sit with the Division as a member thereof.

"Mr. T. J. Hankins, Agent for the Chicago, Rock Island & Pacific Railway Company at Goodland, Kansas, is also required to act as Express Agent at that point for the Railway Express Agency Incorporated. Prior to June 1, 1930, he received the regular established rate of commission (10 per cent) on gross L. C. L. express receipts at that office as compensation for his services as Express Agent. Effective June 1, 1930, the express commission rate at Goodland, Kansas, was reduced from 10 per cent to 6½ per cent. Effective March 1, 1934, the 10 per cent express commission rate was restored."

An agreement is in effect between the parties bearing effective date of January 1, 1928.

It is clear from all the evidence that the purpose of the reduction in Hankins' express commissions, was to save money, not only for the Express Company but for the Railroad. Prior to the reduction, a night transfer clerk had been employed at a monthly salary of \$150.00, \$90.00 of which was paid by the railroad and \$60.00 by the Express Company. The purpose of the reduction in the express commissions, as quite frankly explained to Hankins, was to obtain from him a monthly sum estimated to amount to \$90.00, which would be applied to reduce the contributions made by the railroad and the Express Company, respectively, to the night clerk's monthly compensation. The railroad indeed was to be the chief gainer, for whereas it had previously paid 60% of the night clerk's salary, it was, after the arrangement with Hankins was consummated, to pay only 20%.

The railroad, therefore, had a direct interest in bringing about the reduction in Hankins' commissions, and the evidence leaves no doubt that the railroad, whether or not it conceived the plan, joined with the Express Company in working it out, and persuaded Hankins to accept it. There were joint conferences between Hankins, the Superintendent of the Carrier, and the Superintendent of the Express Company, regarding the adoption of the plan, and just before Hankins' acceptance, he received a letter from the superintendent of the Carrier warning him that unless he accepted, the night transfer clerk would probably be taken off altogether, which would, of course, very seriously increase Hankins' burdens and duties. He yielded, and the reduction was put through.

It is clear that his commissions were a part of his total compensation for the work which he did for the carrier. He was required by the carrier to do

the express work, and presumably because of the relatively large express revenues at his station, his salary was fixed at substantially less than the salaries of other agents in less important stations. Article 2 (b) of the Agreement between the parties reads as follows:

"(b) ADJUSTMENT OF SALARIES FOR EXPRESS OR TELEGRAPH BUSINESS.—When the express business or the commercial telegraph business is taken away, or created, or when the commercial telegraph commissions are discontinued on any position, thereby reducing or increasing the average monthly compensation, the general chairman will be notified and a prompt adjustment of salaries affected will be made conforming to the rates paid for similar positions."

This Article establishes beyond any doubt the intimate relationship between *commissions and salaries*, and the fact that the former are a part of the total compensation of the agent for this railroad work.

The reduction in Hankins' commissions amounted to a reduction in his total compensation paid him for the work which he performed for the Carrier. The very essence of a collective agreement of the sort involved in this case is that reductions in the compensation of individuals shall not be effected by individual bargaining with the particular employe, but shall be effected only through negotiations with his representatives, who are the parties to the agreement. Article 23 simply expresses this principle when it provides that no departure from the rates of pay prescribed in the agreement shall be made without prior notice to the representatives of the employees. It is immaterial that this Article speaks of "rates of pay" and does not specifically mention commissions. The commissions are a part of the total pay and whether Article 23 were in the Agreement or not, the carrier would be obligated to negotiate desired changes in pay with the representatives of the employees, and not with the employees individually. To hold otherwise would be to destroy the whole purpose and very being of the Agreement.

Since the carrier should therefore have notified the employee's representative of the commission reduction, which it desired in its own interest to effect in conjunction with the Express Company, the carrier violated the Agreement, and must be held responsible for loss suffered by the employee as a result. Had the representatives of the employee been notified, and had the matter been properly negotiated with them, it may well be that some reductions in the commissions would have been agreed upon. But this was not done, and we can not speculate on what might have happened. The simple result of the whole transaction was that the railroad saved money in joining with the Express Company in effecting the commission change, and that the work that Hankins performed for the carrier was paid for in a lower total amount. We are not concerned with whether this was a fair result or not, or whether prior to the change Hankins was or was not being overpaid. We are concerned only with the manner in which the change was accomplished. It was accomplished by individual bargaining in violation of the agreement, and that disposes of the case.

This decision is confined to the facts, and we do not need to determine what the result would be where the Express Company itself negotiated a change in commissions on its own initiative, and without any participation by the carrier in the negotiations. Here the carrier not only took the leading part, in furtherance of its own interests, in effecting the reduction, but as the evidence shows, had the final voice in determining when the commission cut should be restored. The Express Company appears throughout as a subordinate actor.

A situation which was indistinguishable in substance from the case before us was presented to this Division, and decided similarly in the claimant's favor in Award 181 in Docket TE-141, January 24, 1936. An analogous decision was rendered by the United States Railroad Labor Board in its Decision 2454, Docket 2819, May 27, 1924.

AWARD

Claim sustained.
By Order of Third Division:

NATIONAL RAILROAD ADJUSTMENT BOARD.

Attest:

H. A. JOHNSON, *Secretary*.

Dated at Chicago, Illinois, this 21st day of March 1936.