

NATIONAL RAILROAD ADJUSTMENT BOARD
Third Division

I. L. Sharfman, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
THE ALTON RAILROAD COMPANY

STATEMENT OF CLAIM.—

"Claim of the Order of Railroad Telegraphers in The Alton Railroad that Mr. C. L. Benedict, Joint Railway-Express Agent at Slater, Mo., be paid the normal ten (10%) per cent commission on express shipment, Los Angeles, Calif., to Slater, Mo., in June 1935."

STATEMENT OF FACTS.—The following statement of facts was jointly certified by the parties:

"On June 12th, 1935, the Railway Express Agency, Inc., accepted at Los Angeles, and transported a shipment to John Schaner, Slater, Mo. The shipment was transported from Los Angeles to Chicago by airship, and by rail movement from Chicago to Slater.

"The Joint Railway-Express Agent at Slater, who received the shipment, was paid a commission on the following basis:

"Five (5%) percent on the air haul; and

"Ten (10%) percent on the rail haul."

An agreement between the parties bearing effective date February 16, 1929, was placed in evidence, and the specific rules cited as bearing upon the disposition of the dispute were as set forth below in the positions of the parties.

POSITION OF EMPLOYEES.—The contentions of the employees were submitted as follows:

"The regular established commission rate paid station agents for the handling of the L. C. L. business of the Railway Express Agency, Inc., on the Alton Railroad is ten (10%) percent. This is amply supported by the evidence submitted to this Board by the Alton Railroad in Docket TE-45 in which the Carrier in its separate statement of facts stated:

"The regular established commission rate for the handling of the business of the Railway Express Agency, Inc., on the Alton Railroad is at present and has been for many years past 10%, except at Lemont, Illinois, and Lockport, Illinois. At those two stations the established rate has been 8%."

"The dispute involved in Docket TE-45 concerned the claim of the Order of Railroad-Telegraphers that the rate of 10% be restored at Lemont. This dispute was adjusted by the Railway Express Agency, Inc., with The Order of Railroad Telegraphers subsequent to the hearing on the Docket by this Board, by restoring the 10% rate at Lemont and also at Lockport, effective April 1st, 1935, which adjustment being satisfactory to the organization permitted us, with the consent of the Alton Railroad, to withdraw the case from before this Board before an award was issued.

"With the disposition of the commission rate in the Lemont and Lockport cases, the regular established L. C. L. commission rate at all stations on the Alton Railroad covered by Telegraphers' agreement has been 10% since April 1st, 1935.

"The commission rate of 10% on all L. C. L. express shipments, received and forwarded, applies on such shipments from the originating point to ultimate destination where handled by the Railway Express Agency.

"The L. C. L. shipment in question was accepted by the Railway Express Agency at Los Angeles, Calif., for transportation to John Shaner at Slater,

between the Carrier and its Telegraphers became effective, and the Order of Railroad Telegraphers had full information at the time the schedule was negotiated concerning the commission rates applicable to air express shipments. When new schedule was negotiated, no mention was made of the express rates in effect, nor was any attempt made to negotiate schedule of rates.

"We reiterate our position that the Railroad Company is not properly a party to this grievance. Further, we desire to protest at this time the fact that we were compelled to defend this case."

OPINION OF BOARD.—The claimant in this case is a joint railway-express agent. His primary employment is with the railroad, but under the Express Operations Agreement between the Alton Railroad Company and the Railway Express Agency he performs express service on a commission basis as well as railroad service under the rate of pay fixed in the Telegraphers' Agreement. The express commissions constitute a part of his total compensation, and the established basis for computing these express commissions must be taken to have constituted a substantial factor in the negotiation of the rate of pay for railroad service applicable to him. In the current Telegraphers' Agreement on this property, in connection with the position at Slater for which a rate of 62 cents per hour is specified, the fact that the agent also receives express commissions is expressly noted. Under such circumstances changes in the express commissions, no less than changes in the railroad rates of pay, may constitute violations of the agreement. Rule 12 of the agreement also provides that "should commissions be discontinued, causing loss in compensation, adjustment of salaries affected will be made." This is but a further recognition of the intimate relationship which exists between express commissions and railroad compensation. While it provides for adjustment of railroad compensation only upon discontinuance of commissions, it does not authorize changes in these commissions short of their complete discontinuance. The claim here at issue, then, clearly arises under the terms of the prevailing agreement, and as established in a considerable number of decisions of this Division, including Awards 181, 218, and 297 cited by the claimant, there can be no question as to the authority of the Board to assume jurisdiction of the dispute.

It appears that 10 percent has been the long established express commission rate on L. C. L. shipments on this property, except where shipments are handled by two express companies. In this case a single express company handled the shipment throughout, but the carrier contends that the customary 10 percent rate was designed to be applicable only to rail-hauls and does not comprehend air-hauls. The evidence of record affords no support for this contention other than the attempted exercise by the carrier of this right to differentiate between rail-hauls and air-hauls. Prior to the announcement of policy with respect to air-hauls, the commission was always computed as a percentage of the express charge without reference to the type of facilities utilized by the express company. It is doubtless true that transport by air tends to increase the express charge and thus to increase the actual compensation of the agent as far as the particular movement of express matter is concerned. It is significant, however, that there appears to be neither a minimum guarantee nor a maximum limitation with respect to actual compensation; furthermore, other factors—like the volume and character of the merchandise carried—may similarly affect the amount of actual compensation, and in a downward as well as in an upward direction. Whether changes in actual compensation result from the substitution of air-hauls for rail-hauls or from the operation of these other factors, negotiation between the parties rather than ex parte action is the appropriate remedy if the outcome is deemed to be without justification. When the policy as to air-hauls was first announced protest was promptly entered by the employees; and as far as the record discloses this is the first instance in which payment on the new basis was actually involved. In neither the merit of the controversy nor in the procedure followed, therefore, is there to be found an adequate basis for questioning the validity of the claim as submitted.

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 employee involved in this dispute are respectively carrier and employee 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 practice with respect to express commissions here involved contravenes the terms of the prevailing agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: H. A. JOHNSON
Secretary

Dated at Chicago, Illinois, this 24th day of February 1937.