

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Arthur M. Millard, Referee

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**PARTIES TO DISPUTE:**

**THE ORDER OF RAILROAD TELEGRAPHERS**  
**MISSOURI PACIFIC RAILROAD COMPANY**  
Guy A. Thompson, Trustee, Mo. Pac. R. R. Co.

**STATEMENT OF CLAIM:** "Claim of the General Committee of The Order of Railroad Telegraphers on the Missouri Pacific Railroad Company that:

"The established commission rate of 3%, with a maximum of \$10.00 per car on all carload express business paid all railroad express agents by the Railway Express Agency, Inc., which was arbitrarily reduced to a flat rate of \$5.00 per car by the Railway Express Agency, Inc., effective May 1, 1930, with the concurrence of the railway management, shall be restored and all agents affected be retroactively reimbursed for any monetary loss sustained as a result of this arbitrary reduction."

**STATEMENT OF FACTS:** In their ex parte submission the employees stated the facts as follows:

"Prior to May 1, 1930, the universally established commission rate on all carload express business was 3%, maximum \$10.00 per car, and all railroad agents required to act as agent for the Railway Express Agency, Inc., were compensated on that basis.

"On April 19, 1930, the Superintendent of the Railway Express Agency, Inc., issued an order in which he stated that on and after May 1, 1930, the rate on all carload express business would be \$5.00 per car instead of 3%, maximum \$10.00 per car, which was the rate agents received prior thereto. This action of the Railway Express Agency, Inc., was sanctioned by the carrier in Assistant General Manager E. C. Wills' letter dated July 24, 1930.

"This reduction of the rate paid all railroad agents, also required to act as express agents, was arbitrarily put into effect without notice, conference, or agreement with duly authorized representatives of the employees."

**POSITION OF EMPLOYEES:** "The rate of 3%, with a maximum of \$10.00 per car, was the universally established rate on all carload express business, and all railroad agents, who are also required to act as express agents, were paid on that basis. The rate of 3%, with a maximum of \$10.00 per car, had been in effect for many years, in fact as far back as memory goes. It was considered as an inseparable part of their total wage, which will be fully explained later in this brief.

"On April 19, 1930, Mr. E. E. Honn, Superintendent of the Railway Express Agency, Inc., issued the following notice to all Commission Agents, joint with the Missouri Pacific Railroad:

(2) That the railroad company has no contractual obligation under its agreement with its employees dated January 1, 1930, to maintain amounts or rates of commissions paid by the Railway Express Agency to the railroad company's agents."

**OPINION OF BOARD:** This case represents a claim of the General Committee of the Order of Railroad Telegraphers for the restoration of the former commission rate paid to all Railroad Express Agents on the lines of the Carrier by the Railway Express Agency, Inc., and which was reduced effective May 1, 1930; and for the retroactive reimbursement of such agents for any monetary loss sustained by reason of the reduction made in the commission rate.

In its submission the General Committee contends that the Carrier violated Article 2, paragraphs (c) and (e) of the existing Agreement between the parties effective January 1, 1930, in that the basic wages of the agents affected were reduced with the concurrence of the Carrier or railway management by the reduction in express rates and by the establishment of a less favorable rate of pay than was evidenced in the primary conferences and negotiations between the parties, and without notice to or conference and agreement with the General Committee.

The Carrier contends that the National Railroad Adjustment Board is without jurisdiction in this case because:

1st. This claim does not cover a pending and unadjusted dispute under and as defined by the Amended Railway Labor Act, approved June 21, 1934: and

2nd. That the Carrier is not responsible under its agreement with the Order of Railroad Telegraphers for the payment of express commissions.

Together with these contentions of the Carrier the statement is made that "since March 31, 1933 the properties of the Carrier have been operated under the jurisdiction of the Federal Court for the Eastern District of Missouri, in proceedings under Section 77 of the Bankruptcy Act"; and that "wage claims accruing since March 31, 1933 are obligations of the Trustee, and wages accruing prior to that date are obligations of the Missouri Pacific Railroad Company."

Considering the first contention of the Carrier that this Third Division of the National Railroad Adjustment Board is without jurisdiction, because the case was not a "pending and unadjusted" dispute on the date of the approval of the Amended Railway Labor Act, on June 21, 1934, the Board submits that in the protests made during 1930 by the representatives of the employees or General Committee over the reduction made in the commission rate, effective May 1, 1930, a dispute did arise which was pending and unadjusted at the time the Amended Railway Labor Act was approved; while a further valid statement is made with respect to what is referred to as an unreasonable delay in the later presentation of the claim.

However that may be, the application of the Amended Railway Labor Act to this claim is clearly indicated, as the Act was not limited to cases pending and unadjusted on the date of its approval, but in the proper application and interpretation of paragraph (i), Section 3, in which the term "pending and unadjusted" appears, the paragraph applied broadly to "The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions, including cases pending and unadjusted on the date of the approval of this Act." In other words, the inclusion of the term "pending and unadjusted" did not exclude the application of the paragraph to disputes between the employees and carrier or carriers growing out of grievances, etc., but made cases that

were pending and unadjusted inclusive with such disputes as had not as yet ripened into cases or claims at the time of the approval of the Act.

Under this interpretation of Paragraph (i) of Section 3 of the Amended Railway Labor Act, coupled as it is with the presentation of a grievance in the form of a protest in July of 1930, the Board rules that this instant case and the dispute involved is properly before this Third Division of the National Railroad Adjustment Board.

With respect to the subject of the Carrier's responsibility for the payment of Express commissions under its agreement with the Order of Railroad Telegraphers, the Carrier contends that no rule can be found in the agreement between the parties under which the carrier agreed or was obligated to make any payments to agents in connection with the handling of express, and that such rates as were established for the handling of express were not the result of either negotiation or contract with the employees.

In the opinion of the Board there can be no doubt but that in the reduction of the express rates the basic wages of the agents affected were seriously disturbed, while the establishment of a less favorable rate of pay for such agents or agencies through such reduction is clearly indicated.

In connection with the Carrier's statement to the effect that no rule exists in the agreement by which the carrier is obligated to make any payments to agents in connection with the handling of express, and that such rates as were established were not the result of either negotiation or contract with the employees, the fact that such basic wages as were negotiated were disturbed cannot but place a definite responsibility upon the Carrier for such disturbances; especially when the fact is considered and conceded by the Carrier that the Express Company commissions influenced the rates which the Carrier agreed to pay the agents at the stations affected.

There is in the files of this case a statement of the Superintendent of the Railway Express Agency to the effect that "the Railroad Company is the primary employer of agents, who incident to their railroad work also act as agents for this Company," and inasmuch as the Railroad Company, or the Carrier, is recognized as the primary employer, and the fact that a joint agency of the Carrier and the Express Company is established, there is a basis for the contention of the General Committee that while it is conceded the Railway Express Agency took the initiative in the reduction of express commissions, it could not have made those reductions without the concurrence of the carrier.

In further connection with the responsibility of the Carrier and the joint agencies established, the Board submits that inasmuch as the Carrier required its agents to handle express and permitted them to receive compensation or commissions from the express company for such handling, the fact is evidenced that the Carrier recognized the handling of express as a part of the agents' duties, and predicated the amount of compensation or wages to be paid by the Carrier to the agents affected upon an estimate, knowledge or reasonable assumption of the express commissions or compensation which the agent was to receive from the performance of those duties, incident to his railroad work, which were performed for the express agency.

Insofar as the statement is made concerning written agreements, the Board submits that inasmuch as these commissions existed at the time the agreement between the parties was ratified, and that they had existed for some time previous to the ratification of such agreement, there is a sound basis for the conclusion that the original express commission paid before the reduction was a determining factor or means of arriving at a mutual understanding between the parties of the compensation to be paid by the carrier to the representatives of the joint agencies affected by the reduction made in the payment of express commission.

In view of these conditions, the Board submits that the commissions paid by the express Agency at the time the agreement was ratified formed as much a part of the compensation of the employes or agents affected as the figures written into the agreement for the railroad service, and in disturbing the basic rate upon which the agents' compensation from the Carrier was founded and by permitting the Express Agency to reduce the express commission without conference and negotiations, the Carrier violated the terms and principles of the existing agreement between the parties.

Insofar as the obligations of the Trustee and the Carrier are concerned as they affect this claim, the Board submits that whether the Railroad affected is or is not in receivership, the fact remains that the employes have the right of claim against either the Carrier, or against such controlling agency, court or force, as represents the employers of the claimants.

**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 in disturbing the basic rate upon which the agents' compensation from the Carrier was founded and by permitting the Express Agency to reduce the express commission without conference and negotiations, the Carrier violated the terms and principles of the existing agreement between the parties.

#### AWARD

Claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division.

ATTEST: H. A. Johnson,  
Secretary.

Dated at Chicago, Illinois, this 5th day of October, 1937.