Award No. 522
Docket No. TE-515

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Arthur M. Millard, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
PERE MARQUETTE RAILWAY COMPANY

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers that the normal established commission rate of 10% on all less carload express shipments paid the agent at Bridgman, Michigan, by the Railway Express Agency, Inc., which was arbitrarily reduced by the express company with the approval of the railway company to 5% during the months of March, April and May in the years 1931, and 1932, and during the months of April and May in the years 1933, 1934, 1935, and 1936, without notice to or agreement with the representative General Committee, shall be restored retroactively for the months reduced, the agent reimbursed accordingly, and that no subsequent reductions in the established 10% rate shall be made for any month in any year subject to the provisions of Section 6 of the Amended Railway Labor Act."

STATEMENT OF FACTS: In their ex parte submission the General Committee stated the facts as follows:

"Prior to the year 1931, the railway agent at Bridgman, Mich., who is required to also serve as express agent, was paid the normal established commission rate of 10% by the Railway Express Agency, Inc., on all less carload express shipments handled at this station during all of the months of each year.

"For the months of March, April and May in 1931 and 1932, and for the months of April and May in 1933, 1934, 1935 and 1936, the established basic rate was arbitrarily reduced to 5% by the express company with the approval of the railway company.

"A contract of agreement, last revised May 16, 1927, governing the compensation of agents, including the agent at Bridgman, exists between Pere Marquette Railway Company and The Order of Railroad Telegraphers.

"The General Committee of the organization, party to the contract of agreement, was not given notice of or conferred with by either the railway company or the express company in making these changes in the express commission rate."

The Carrier stated the facts as follows:

"Bridgman, Michigan, is a point located in the Michigan Fruit Belt along the easterly shore of Lake Michigan, where there has been a large production of strawberry plants for several years back, resulting in abnormal express commissions being paid to the joint railway and express agent at that point, over and above his salary received from the Railway Company during the months mentioned, viz., March, April and May in the years 1931 and 1932, and April and May in the years 1933, 1934, 1935 and 1936.

"Therefore, we hold and contend that the individual agreements forced upon the agent at Bridgman by the express company by threat and coercion are null and void, and should be treated by the Board in this light, and as if a lesser rate had not been individually made."

POSITION OF CARRIER: "The carrier takes the position that this dispute is one which involves only Railway Express Agency, Inc., and the employes' organization, by reason of the contract provisions existing between the Express Agency and the Railway Company, and that Railway Express Agency, Inc., should have been the other party to the ex parte submission, instead of the Railway Company.

"The pertinent part of Article XI, Section 1 of the agreement between Pere Marquette Railway Company and Railway Express Agency, Inc., bearing date of March 1, 1929, reads as follows:

> 'Sec. 1. The Express Company may arrange with the Rail Company for station and train employes of the Rail Company to act as agents and express messengers of the Express Company and to handle express at railroad stations, subject to the rules of the Express Company, . . .'

"It is no doubt true that the employes' organization has no agreement with Railway Express Agency, Inc., but Section 1 of the Railway Labor Act, as amended, subjects the Express Agency to the jurisdiction of this Board, the same as the Railway Company, and the Railway Express Agency, Inc., should have at least been joined as a party to this ex parte submission. The Railway Company has no control whatever over the making of agreements of employment between its employes who are also engaged as joint employes, or in the fixation of the amount of commisions to be paid for the handling of express business. In this particular instance the joint employe of the railway and express agency was not deprived of his individual right to make an independent contract with the Express Agency for the handling of its business aside from any agreement that may have existed between the employes' organization and the Railway Company. The Railway Company had an agreement with the employes' organization effective May 16, 1927, wherein an hourly rate of pay was stipulated for the agent at Bridgman for rendition of his services to the Railway Company, which hourly rate was not disturbed or affected by the reduction in the express commissions complained of. Prior to the reduction complained of, of the express commission, the joint railway and express agent consented to that reduction, and it was contrary to his desire to have the employes' organization pursue any claim either against the Railway Company or the Express Agency, and he waived all rights in the presentation of any such claim in the following communication dated April 5, 1932, written on stationery of Railway Express Agency, directed to Mr. R. M. Burr, General Chairman of the Employes' Organization of the Pere Marquette, and a carbon copy thereof directed to E. J. Flanagan, Supt., Railway Express Agency, then located at Grand Rapids, Michigan:

> 'Dear Sir & Bro.:—
>
> This will be your authority to discontinue pressing claim any further relative express commission during plant season at this station, I am,
>
> Very truly yours,
>
> (Signed) Jas. W. Harris.' "

OPINION OF BOARD: This is a claim of the General Committee of The Order of Railroad Telegraphers for the retroactive restoration to the agent at Bridgman, Michigan, of the commission rate of 10% on all less than carload express shipments from that station during the months of March, April and May in the years of 1931 and 1932, and during the months of April and May in the years of 1933, 1934, 1935 and 1936, and which was reduced

to 5% by action of the Railway Express Agency, Inc., without notice to or agreement with the representative General Committee. Also that no subsequent reductions in the 10% rate be made for any month in any year except under the provisions of Section 6, of the Amended Railway Labor Act, approved June 21, 1934.

It is the contention of the General Committee that in reducing the express commissions paid to the agent at Bridgman the Carrier violated Article 15 of the existing agreement between the parties effective May 16, 1927, in that the basic wages of the agent 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 agreement with the General Committee as required by the final clause of the contract of agreement between the parties.

The Carrier contends that the Railway Company has no control over the making of agreements of employment between its employes who are also engaged as joint employes; or in the fixation of the amounts of commissions to be paid for the handling of express business; and submit that the subject of this dispute is one involving only the Railway Express Agency, Inc., and the employes' organization by reason of a contract provision existing between the Express Agency and the Carrier, and which provides that the Express Company may arrange with the Rail Company for station and train employes of the Rail Company to act as agents and express messengers of the Express Company.

The Carrier further contends that the joint employe or agent of the railway and express agency was not deprived of his individual right to make an independent contract with the Express Agency, by reason of any agreement that may have existed between the employes' organization and the Railway Company, and submit that the hourly rate of pay stipulated for the agent at Bridgman for his service with the Railway Company was not disturbed or affected by the reduction of the express commission which constitutes the basis of this claim.

A further contention of the carrier is, that prior to or at the time of the reductions in express commissions, the joint railway and express agent at Bridgman entered into a separate and independent written agreement with the Railway Express Agency, Inc., and, as an independent contractor agreed during the several periods indicated to handle the business of the Railway Express Agency, Inc., at Bridgman at the reduced rate and, in a letter dated April 5, 1932, addressed to the General Chairman of the employes' organization, waived all rights in the presentation of any claim against the Railway Company or the Express Agency and authorized the General Chairman of the employes to discontinue pressing claims for the express commission.

In connection with the Carrier's contention that the Railway Company "had no control over the making of agreements of employment between its employes who are also engaged as joint employes, or in the fixation of the amount of commissions to be paid for the handling of express business", the Board submits that the Railway Company, as outlined in the arrangement made by the Express Agency with the Rail Company on March 1, 1929, in accordance with Article XI, Section 1 of the agreement between the Express Agency and the Rail Company, was the primary employer of the individual named in this claim, and as such had authorized and was responsible for the joint agency established.

In further connection with the Carrier's responsibility and prior to any change being made in the express commission the fact is evidenced that early in the year of 1931, or on January 13, 1931, the Express Agency made inquiry of the Rail Company as to whether it would be agreeable to the Railway Company to have the joint agency at Bridgman handle its express business for a flat, or stipulated rate, rather than on a commission basis during the months involved in this claim. The fact that the Carrier concurred in

reducing the commission rate is established by the later action of the Express Agency in taking the subject up with Mr. Harris, the agent at Bridgman, and in putting the reduced commission rate into effect.

Insofar as the Carrier's statement is concerned to the effect that an agreement, effective May 16, 1927, existed between the Carrier and the Employes' organization, wherein an hourly rate of pay was stipulated for the agent's services to the Railway Company, and which the Carrier states was not disturbed nor affected by the reduction in express commissions, the fact is evidenced that the Carrier recognized the handling of express as a part of the agent's duties and predicated the amount of wages, or the rate to be paid the agent by the Carrier, 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 or in connection with his railroad work, which were performed for the express agency.

In view of these conditions, and the fact that the 10% commission rate paid by the Express Agency existed at and prior to the time when the agreement between the parties fixing the hourly rate to be paid the agent at Bridgman was negotiated and established, there is a sound basis for the conclusion that the original express commission paid on May 16, 1927, when the agreement between the parties was ratified, was a determining factor or means of arriving at a mutual understanding between the parties as to the compensation to be paid by the Carrier to the agent at Bridgman who, early in 1931, was affected by the reduction made in the payment of the express commission.

Comment has been made in this claim to the amount of commissions accruing to the agent at Bridgman both under the original as well as the reduced rate, and which have been said to be excessive and abnormal. The fact however should be understood that the cost to the agent for the handling of such business was borne by the agent and was subject to increase or decrease according to the volume of business handled. Prior to the change made by the Express Agency in 1931 the higher rate was paid on business without affecting the earnings of the Express Company. Following the change and during the period when the reduced commission rate was in effect, the net result was an increase in the earnings of the Express Agency and the Carrier, as their interests may appear, and a corresponding reduction in the earnings of the agent, put into effect without negotiation or action other than a demand or ultimatum made by the Express Agency upon the individual, and which is further confirmed by a separate agreement made between the parties.

With the conditions outlined in this instant claim, the Board submits that, as stated by the Carrier, an agreement was ratified between the Employes' organization and the Carrier wherein a basic rate for the compensation of the agent at Bridgman was established and other conditions affecting the employes were agreed to, and these in the opinion of the Board formed as much a part of the compensation and working conditions of the employe as the rate and other conditions written into the agreement for the railroad service. The Board further submits that neither party to the existing agreement made between the parties may amend the rate which forms the basic structure of the employes compensation or any other condition of the agreement or permit such to be done by another interest, without proper conference and negotiation between the parties; and in permitting the Express Agency to reduce the express commission and concurring in such reduction without conference and negotiations between the parties the Carrier violated the rules and principles of the existing agreement.

With respect to the making of agreements between the Express Company and the individual, and the statement made that the joint agent at Bridgman established himself as an independent contractor during the periods at issue and otherwise entered into separate and written agreements with the Express Agency for handling the business of the Agency at a re-

duced rate, the Carrier has cited various decisions of the Supreme Court and other argument in support of its contention that this claim is not properly before this Division.

Each of the decisions, awards and other arguments cited however cover conditions and rulings with respect to the particular case, or cases, then at issue, and the Board submits that the conditions covered by this instant claim are not to be determined through the various questions and conditions existing at other points, or brought out through situations arising in other circumstances, but that this case, as in the cases cited, must be decided on its merits, and it is on this basis, and this alone, that an equitable decision can be rendered on such disputes as may arise.

Insofar as the question is concerned as to this case being properly before this Division of the National Railroad Adjustment Board, inasmuch as this case covers a dispute growing out of the interpretation or application of agreements concerning rates of pay, rules or working conditions as defined by the Amended Railway Labor Act, the Board rules that this case is properly before this Third Division.

Concerning the making of agreements or contracts between the Express Company and the individual employe or agent, and affecting the rules and working conditions established by negotiation between the employe and the carrier, the question of whether such agreements were secured by coercion or intimidation is not of material value so far as it affects this claim. Rules, rates of pay and working conditions negotiated into a collective agreement can only be changed by following the same orderly process of conference and agreement as preceded the ratification of the original agreement.

In the claim at issue the facts are evidenced that the agent at Bridgman was working under a collective agreement which had been properly negotiated between and ratified by the Carrier and the organization of which he formed a part. So long as the agent was employed by the Carrier in the capacity of agent at Bridgman he was working under the rules of that agreement and was bound and governed by its specifications and requirements; and any other supplementary agreement or contract made or entered into by him as an individual that would in any manner change or modify, invalidate or set aside, or that was at variance with the rules, conditions, rates of pay or terms of that agreement, was invalid and a violation of the principles of that agreement unless such supplementary agreement had been effected and ratified following conference and negotiation between the parties to the original agreement.

Concerning the claim of the employes that no subsequent reductions be made in the 10% rate, subject to the provisions of Section 6 of the Amended Railway Labor Act, the Board submits that Section 6 of the Act requires no ruling by this Board as to its future application; the section specified and its provisions stand for themselves, and their future application is not a part of the conditions of this instant claim.

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 employe involved in this dispute are respectively carrier and employe 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 deductions in dispute made by the Railway Express Agency through the process of individual bargaining with the concurrence of the Carrier, were a violation of the existing agreement between the employes, represented by the General Committee, and the Pere Marquette Railway Company, and under the terms of that agreement responsibility rests with

the Railway Company to effect reimbursement for monetary loss sustained by the agent at Bridgman as a result of reduction in express commission during the period indicated in the statement of claim.

AWARD

Claim sustained except as to ruling on possible subsequent deductions as outlined in last paragraph of Opinion of Board.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary.

Dated at Chicago, Illinois, this 29th day of October, 1937.

DISSENT IN AWARD 522, DOCKET TE-515

The opinion and award in this case are lacking in support under the Amended Railway Labor Act and the agreement between the respondent carrier and its Telegraph service employes.

The agreement between the Pere Marquette Railway Company and its Telegraph service employes does not contain any rule providing what the rate of express commissions shall be, nor does that agreement contain any rule imposing an obligation upon the rail carrier to pay express commissions in any amount. The only rule in the agreement between the rail carrier and its Telegraph service employes relating to express commissions is Article 15, reading:

> "Where Express or Telegraph Commissions are discontinued or created at any office, thereby reducing or increasing the average monthly compensation paid to any position, prompt adjustment of the salary affected will be made conforming to rates paid for similar positions."

This rule does not stipulate what the rate of express commissions shall be. It provides only for an adjustment in the railroad salary of the agent when express commissions are discontinued or created at any office. The rail carrier, under its agreement, assumed no other obligation in respect to adjustment of salary as affected by express commissions.

The bill of the petitioner and the opinion in this case cite no specific rule in the agreement between the rail carrier and its Telegraph service employes which it is claimed was changed or violated by the agreements entered into between the Railway Express Agency, Inc., and Agent Harris. The individual agreements entered into by Harris with the Railway Express Agency, Inc., providing for reduction in rate of express commissions from 10 to 5 per cent, did not run counter to any rule in the agreement between the rail carrier and its Telegraph service employees.

The right of individual contract is a constitutional one that is not, and could not be, invalidated by the Amended Railway Labor Act. It is a right affirmed by decisions of the United States Supreme Court.

Bona fide agreements were entered into between the two parties directly interested—the Railway Express Agency, Inc., and Agent Harris—and this Board is without power to set aside these agreements.

For these reasons we dissent from the opinion and the award.

J. G. TORIAN
R. H. ALLISON

CONCURRING DISSENT—AWARD 522, DOCKET TE-515

I concur in the dissent of Messrs. Torian and Allison but I wish to set out with explicitness my reasons for disagreeing with the award and to point out what I conceive to be its principal errors.

The Award in this case is predicated upon a misconception or misunderstanding of the amended Railway Labor Act under which this Board was created and functions, and the relationship comprehended therein between the carriers and their employes; it disregards the decisions of the United States Supreme Court bearing directly on the principal question at issue and denies to the parties the rights definitely affirmed to them by those decisions, and which the court said might be exercised in harmony with the duties imposed by the amended Railway Labor Act; it ignores or places a distorted interpretation upon essential facts with respect to negotiations had by the Railway Express Agency, Inc., with Agent Harris: it is not specific with respect to the violation of the agreement with which the carrier is charged, in that it fails to state or cite the rule or provision of the agreement violated, or the terms of the agreement under which it is asserted responsibility rests with the carrier to effect the reimbursement to Agent Harris of the alleged monetary loss.

In this case, as in others, the referee seems to be in some confusion as to the identity of the party in whose behalf the claim is made, as well as to the principals to the effective agreement. In the opening sentence of the Opinion of the Board he declares it to be a claim of the General Committee, Order of Railroad Telegraphers. It is true that the dispute is so styled in this as in other cases brought by the Order of Railroad Telegraphers as the representative of employes covered by telegraphers' agreements. At times he deals with the agreement as being one between the carrier and the Order of Railroad Telegraphers; at other times, as in the last paragraph of the Findings, he properly recognizes it as an agreement between the carrier and the employes in telegraph service represented by the General Committee.

In certain other awards in which he participated the same confusion is evident; in the opinion contained in two of those awards, one dealing with an alleged improper rate applied to a newly created position, the other with the restoration of a position alleged to have been improperly abolished, he said the claims were not grievances in the sense in which the term is used in the agreement, nor the protest of an **individual** or **his representative** but that, "The claim is a contention of one of the principles of the agreement with the other over the application or misapplication of rules, rates, or conditions where proper application is a matter of mutual or joint responsibility."

The caption of the agreement involved in the cases covered by the two awards referred to stated it to be between the carrier and its employes, represented by the Order of Railroad Telegraphers, and it was signed "Accepted for the Employes:" by three individuals designated respectively as "General Chairman, System Lines; Assistant General Chairman, System Lines; and General Secretary and Treasurer, System Lines."

In the instant case, the caption of the agreement reads:

"PERE MARQUETTE RAILWAY COMPANY
AGREEMENT WITH

"Telegraphers, Telephone Operators, (except Switchboard Operators) Agents, Agent-Telegraphers, Agent-Telephoners, Towermen, Levermen, Bridge Tenders, Tower and Train Directors, Block Operators and Staffmen."

It is signed "For the Employes:" by "General Chairman, Order of Railroad Telegraphers."

The distinction I make is that the agreement is with the employes and not, as the referee conceives, with the organization; its benefits and advan-

tages flow to the employes and not to the organization. The purpose of the agreement is to secure to the employes certain conditions of employment to their advantage and profit. That the employes choose a labor organization as their representative and agent does not make the organization a principal to the agreement with the carrier.

Regarding the Order of Railroad Telegraphers as one of the principals to the agreement in the instant case, the referee seems to hold that agent Harris, being a part of that organization, was so bound to it that he had surrendered any right, individually, to come to an understanding with the Railway Express Agency, Inc. If that is true, it is not a matter that the Express Agency can be assumed to be cognizant of. I do not take issue with the pronouncement that an individual employe cannot revise the collective agreement, but the arrangement entered into by the Railway Express Agency, Inc., with agent Harris did not have that effect, and there is no showing in the record of this case that it in any wise impinged upon any of the terms of the agreement. The agreement entered into by Harris with the Express Agency applied to him and to no other employe.

If the referee's opinion may be taken to hold that the existence of a collective agreement deprives every employe of the class or craft covered by it of his right to treat individually with his employer, then it is pertinent to ask: Must the carrier refuse to deal with an employe respecting the conditions of his employment? If a condition arises that the employe thinks is to his disadvantage, may he not seek, and may not the carrier grant, redress except through an officer of the organization as an intermediary? And if they may not do these things, has not a limitation been placed upon the freedom of association of the employe contrary to the declared purpose of the amended Railway Labor Act (Section 2)? If the employe is forced to deal through an intermediary, is he not then subjected to interference, influence, and coercion in choice of a representative?

The complaint in this case is that the Railway Express Agency, Inc., **arbitrarily** reduced commissions on L.C.L. express matter handled by the agent at Bridgman, Michigan, during certain months of the years 1931-1936 inclusive, with the consent of the respondent Pere Marquette Railway Company and without notice to the representative of the General Committee. The employes in their petition state:

> "Early in 1931, the agent at Bridgman was individually approached and bargained with by the express company to accept a five per cent commission rate during March, April, and May of that year. No other change in his express working conditions was to be made. On threat by the express company to establish a separate express agency at Bridgman if he did not accede to the individual proposal, the agent eventually accepted the lower rate for the three months in that year."

Later on in the petition they say that agent Harris knew that a separate express agency could be established and that if it were done he would be harmed **by the loss of all express commissions** and, therefore, as an individual he accepted the proposed express commission reduction. This, the employes characterize as an ultimatum enforced by coercive and intimidating tactics. The referee says that whether they were coercive or intimidating is not material but in the tenth paragraph of the Opinion of Board he says that the reduction in commissions was put into effect without negotiation or action other than a demand or ultimatum by the Express Agency. As shown by the employes' statement, there were negotiations which began early in the year and were finally concluded by the agreement which Harris signed March 4, 1931.

There is nothing contained in the agreement that forbids the discontinuance of the arrangement whereby the railroad agent acts also as agent for the Express Agency; indeed the employes acknowledge the right to discontinue it and Article 15 of the agreement specifically provides for it. To say or imply that a party announcing his intention to do a thing that he clearly

has a right to do is guilty of threat, intimidation, and coercion, or that such an announcement constitutes a demand or ultimatum, is to reject the temperate language of judicial pronouncements.

In view of the extent of the Opinion in this case, it is essential that all of the important facts of record be revealed in order to test its soundness. If the ten per cent commissions were an exorbitant tax on the revenues of the Express Agency, as an alternative to paying the ten per cent commission, could it establish a separate agency at a saving? The referee points out in the tenth paragraph of the Opinion that the agent bore the cost of handling the business and that it fluctuated according to the volume of business handled, which means that the agent employed clerical help during the rush season and paid it out of his commissions. By the employes' testimony, the ten per cent commission on the business handled during the months of March, April, and May, 1931, would have amounted to $3,412.54. The agent paid out for clerical help $1,321.00. But the agent had agreed to accept a five per cent commission during this period and therefore his commission was $1,726.27, so that after paying the help for the 1931 season of three months he had left $385.27 for his own services.

During the years 1931 and 1932, when the reduction was in effect for three months, commissions at ten per cent would have amounted to $6,355.82. The employes represent that the agent paid out for help during these two periods $2,536.00. There would have been a balance left, therefore, out of the ten per cent commission, of $3,799.82 which the express agency could have applied toward the expense of a salaried agent, after paying for the help. This balance would have been sufficient to pay a monthly salary of $158.33, for the entire two years, which is approximately $14.00 per month more than agent Harris receives at his salary from the railroad company, exclusive of overtime. The Express Agency would have had the full time of a salaried agent, and less clerical help would have been required, and in addition it would have saved the ten per cent commissions on express business handled during the remaining nine months of the year.

It is plain, therefore, that at the time of this arrangement the express agency could have established a separate agency at Bridgman on a five per cent basis, or on a straight salary basis, and sound business judgment, as well as the requirement of economical management imposed by law, required that action to that end be taken. The referee says in the tenth paragraph of the Opinion that prior to the change in 1931 the higher rate was paid without **affecting the earnings** of the Express Agency. How it was possible for the Express Agency to escape the effect of expenses on earnings before the reduction, unfortunately, is not revealed.

There were separate and distinct undertakings or contracts, in writing, between agent Harris and the Express Agency for each and every year that the five per cent commission was in effect. The general chairman complained to the carrier about the reduction in commissions, and upon this complaint a representative of the Express Agency called on agent Harris to ascertain whether the complaint of the general chairman of the committee represented his attitude, and it was then or shortly following that visit that Agent Harris addressed the letter dated April 5, 1932, to the general chairman directing him to discontinue pressing the claim further. There is no evidence to show that Harris initiated this claim, nor is it asserted that he did. The United States Railroad Labor Board, during its existence, guided by the wisdom of experience, required that a claim involving a matter such as this be initiated by the aggrieved employe, fully recognizing at the same time, however, his right to have it prosecuted in his behalf by a representative. But this Board, its practical sense overruled by academic theory, has cast aside such a reasonable requirement and opened the doors wide for such claims as this, not initiated by the employe affected, but in this case initiated, in the first instance, against his will. A letter of record from Agent Harris to the general chairman under date of February 11, 1937, indicates that the lure of the $6,000 or more involved may have served to overcome his former scruples. Such decisions serve not to promote harmony between carriers and their employes but disharmony and distrust.

As to the right and ability of the agent to enter into an individual agreement in a matter such as that herein involved, there was cited by the carrier the decision of the United States Supreme Court, in the case of the National Labor Relations Board v. Jones & Laughlin Steel Corporation, as well as the decision in the case of Virginian Railway Company v. System Federation No. 40. From the latter decision emphasis was placed on the language in the following excerpt from the citation:

> "When read in its context (Section 2, Third and Fourth, of the amended Railway Labor Act) it must be taken to prohibit the negotiation of labor contracts, generally applicable to employes in the mechanical department, with any representative other than respondent, but not as precluding such individual contracts as petitioner may elect to make directly with individual employes."

There was placed before the referee, also, excerpts from the record in a recent emergency board hearing in which the employes were represented by Hon. Donald Richberg, long identified in his professional career with the Railway Labor organizations, in which he voiced the following opinion, dealing with that portion of the decision of the Supreme Court in the Virginian Railway case from which the above quotation is taken:

> "The court in that way met the claim that the majority right of representation infringed upon the constitutional right of the individual; although, as the court pointed out in another place in the opinion, the court was not in a position to raise constitutional rights of employes, so that that was in the nature of dictum; but it seems to me that here was what was decided, that when it comes to collective bargaining for a class, that it is appropriate to provide that the majority may have the exclusive right to make such bargain, it being accepted as corollary thereof that that applies only to collective bargaining, and does not destroy a right of individual bargaining."
>
> "Now, an individual employe may have reason for thinking it very desirable to not insist upon a strict application of a particular rule that might be in his favor. He may be involved in two or three questions involving questions of possible dereliction on his part, involving some counter interest in connection with another claim that may be doubtful, and it is part of his individual right under the circumstances to say that as far as I am individually concerned this kind of a settlement is satisfactory to me."

Referring to these in the thirteenth paragraph of the Opinion, the referee states that the decisions, awards, and other arguments cited cover conditions and rulings with respect to the particular case or cases then at issue, and that the conditions covered by the instant claim are not to be determined through questions and conditions existing at other points or brought out through other situations arising in other circumstances, etc., but that this case must be decided on its merits. In that statement I wholly concur. This case should have been decided on its merits in the light of the important principle involved. But I submit that the question of merits is one thing, and the right of an individual to bargain in his own behalf is a matter of principle and is quite another thing, and I submit further that, the principle having been established by a decision of the Supreme Court, it is not incumbent upon every individual who wishes to bargain for himself thereafter to undertake to secure another decision of the Supreme Court affirming to him that right. In the instant case the principle could have been honored and the merits of the case considered in the light of it, and thus could an equitable decision have been rendered, and not otherwise.

In the fifteenth paragraph the referee implies that by some action of Agent Harris the agreement between the carrier and the telegraph employes was changed, because he says that rules, rates of pay, etc., negotiated into a collective agreement, can only be changed by following the same process that preceded the ratification of the agreement in the first place. The car-

rier nowhere in the record of this case took issue with that statement, nor does the writer do so. It was the position of the carrier, as it is of the writer, that not so much as the dotting of an "i" or the crossing of a "t" in the collective agreement had been changed by the action of Agent Harris in agreeing with the Express Agency to the reduction in the express commission. The express commissions are not stated or stipulated in the agreement. They are referred to only in Article 15, in the following language:

> "Where express or telegraph commissions are discontinued or created at any office, thereby reducing or increasing the average monthly compensation paid to any position, prompt adjustment of the salary affected, will be made conforming to rates paid for similar positions."

But scant reliance is placed upon this rule by the petitioners in this case. They do not invoke the only remedy provided in the rule. There is no requirement in this rule, or elsewhere in the agreement, that the railroad shall maintain the rate or the amount of express commissions. The rule is plain and explicit as to the obligation imposed upon the railroad in the event express commissions are discontinued at a station where they have been in effect. In that event, the requirement is not that the railroad company shall increase the agent's hourly rate of pay to compensate for the lost express commission, but only that the hourly rate shall be adjusted to put it on a basis comparable with other similar positions. Whether this rule may properly be invoked where the rate of express commissions is changed, but the commissions are not entirely abolished, may be an open question. The writer thinks it may not, but some referees sitting with this Division have held other views. In any event, the rule makes no provision for the remedy sought in this petition and the award is insupportable under it.

The petitioner rests the case principally upon the broad general assertion, adopted by the referee in substance in the last paragraph of the findings, that the deductions made by the express company through the process of individual bargaining were a violation of the existing agreement and **under the terms of that agreement** responsibility rests with the railway company to effect reimbursement. The petitioner and the referee alike leave us entirely in the dark as to those specific provisions of the agreement that were violated by the individual bargaining of the agent, or as to those specific provisions or terms of the agreement that impose the responsibility upon the railroad to reimburse the agent his alleged monetary loss.

I hold it to be only within the jurisdiction and authority of this Board to consider the claim of the petitioning party in the light of the agreement covering the class or craft to which the employe or employes involved belong; to interpret and require the application of the effective agreement in consonance with its true intent, and to grant such remedy as the terms of the agreement may require, but that this Board has no jurisdiction with respect to the making of agreements and no authority to add to or restrict the terms of an existing agreement. Nor can it lawfully, in my opinion, impose its own views in granting a remedy, where in its judgment one is due, beyond that specifically and definitely provided for by the terms of the agreement. In this award, as in other awards of this nature, I hold that the terms of the agreement have been enlarged and that a remedy has been granted contrary to the terms of the agreement involved.

For all the above-stated reasons I dissent from the award in this case.

GEO. H. DUGAN.