Award No. 537
Docket No. TE-512

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Arthur M. Millard, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SOUTHERN PACIFIC LINES IN TEXAS AND LOUISIANA

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Pacific Lines in Texas and Louisiana, that the normal commission rate of 3 per cent, with a maximum of $10.00 per car when destined to certain designated points, and 3 per cent with no maximum per car when destined to other points on carload express shipments paid railroad-express agents by the Railway Express Agency, Inc., which was arbitrarily reduced to 3 per cent and 1½ per cent with a maximum of $5.00 per car as of July 1, 1930, be restored and, that: agents involved be retroactively reimbursed for the difference."

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

"Prior to July 1, 1930, all railroad station agents in the employ of the Southern Pacific Lines in Texas and Louisiana required by the carrier to also act as agent for and handle business of the Railway Express Agency, Inc., at their respective stations, were paid a commission of 3 per cent, with a maximum of $10.00 per car when destined to certain designated points, and 3 per cent with no maximum per car when destined to other points, on all carload express shipments handled at their stations.

"On February 19, 1930, Mr. C. L. Mackinzie, Superintendent of the Railway Express Agency, Inc., with the approval of the railway company issued arbitrary instructions to railroad station agents which established the following commission rates:

"Local—(Shipments originating at and destined to offices of the Railway Express Agency, Inc.).....3%
Maximum ..... $10.00 per car
Minimum ..... 3.00 per car

"Interline—(Shipments originating at or destined to offices of other express companies).....1½%
Maximum ..... $ 5.00 per car

"This reduction in the express commission rates on carload express shipments paid railroad agents who are also required to act as express agents was arbitrarily put into effect without notice, conference, or agreement with duly authorized representatives of the employes. This reduction in the commission rate and reduction in the maximum allowance per car became effective on July 1, 1930."

Agreements bearing date of April 16, 1930—commonly referred to as the Sunset Agreement, H. & T. C. Agreement and H. E. & W. T. Agreement —are in effect between the parties.

as or on account of express commissions, and that not one penny has been paid by this carrier to any agent as, for, or on account of express commissions. To sustain this claim would be to promulgate a new rule which would compel the carrier to pay compensation for the handling of express, which is the sole legal responsibility and obligation of a separate and distinct corporation, the Railway Express Agency, Inc.

"The telegraphers' schedules on these lines contain certain guaranteed minimum rates of pay which were agreed to by the parties. The parties further agreed that the rates agreed upon were exclusive of express commissions. Every agent has been paid every penny of compensation provided for in the agreements. Beyond the payment of what is provided for in the schedule, this carrier has assumed no obligations to the employes covered by the telegraphers' agreements and no such obligation exists in fact or in law. In this proceeding the employes seek compensation from the carrier that is admittedly not provided by the contracts. An award sustaining the claim would be arbitrary, illegal and void."

OPINION OF BOARD: In this claim of the General Committee of the Order of Railroad Telegraphers for the restoration of the express commission rates paid to Railroad Agents on the Southern Pacific Lines in Texas and Louisiana by the Railway Express Agency, Inc., and which it is alleged were arbitrarily reduced with the concurrence of the Carrier or Railway Management, effective July 1, 1930, without conference, negotiation or agreement between the parties, and for the retroactive reimbursement to the Agents involved of the difference in rates from the effective date of the change; the Carrier has interposed various objections and denials to the jurisdiction of the National Railroad Adjustment Board and which are specifically detailed in the Position of the Carrier.

Considering the first of these contentions, that this Third Division of the National Railroad Adjustment Board is without jurisdiction because the claim was not a "pending and unadjusted" case within the purview of the Railway Labor Act as amended, the Board submits that in the protests made by the representatives of the employes, or General Committee, during 1930 and 1931, over the reductions made in the commission rates, 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 the alleged delay in the 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 applies broadly to:

> "The disputes between an employe or group of employes 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 employes and the carrier or carriers growing out of grievances, etc., but made cases that were pending and unadjusted inclusive with such disputes as had not ripened into cases or claims at the time of the approval of the Act.

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

The Carrier further contends that the Board is without jurisdiction because this claim is an attempt on the part of the Order of Railroad Telegraphers to hold the Carrier liable for the acts of a wholly separate and distinct corporation, i.e., the Railway Express Agency, Inc., and that if the employes are entitled to reimbursement from any source because of the reduction in commission rates, such claim is against the Express Agency and not the Carrier. A further contention of the Carrier is that the Board is without jurisdiction because the claim does not involve the interpretation of any agreement or agreements relating to rules, rates of pay or working conditions; that there is no rule in the telegraphers' agreements which establishes a commission rate to be paid agents, nor is there any rule which mentions, covers, or relates to reductions in express commissions, or which prohibits reductions from being made in commission rates. The Carrier further contends that there was no violation of the Railway Labor Act of 1926, but if there had been it by no means follows that the employes would be entitled to the compensation claimed in this proceeding; that the jurisdiction of this Board is limited to disputes between carriers and their employes arising out of the interpretation or application of agreements concerning rates of pay, rules or working conditions and that no violation of such agreements is charged; and further that specific claims, for a specific purpose and for specific employes require their presentation by individual employes.

Considering these and other contentions of the Carrier the Board submits that under the Amended Railway Labor Act, approved June 21, 1934, parties to a dispute "may be heard either in person, by counsel or by other representatives, as they may respectively elect" and the presentation of this claim by the General Committee of the Order of Railroad Telegraphers, in behalf of the employes affected, is a proper procedure, in that such organization is the recognized representative of the employes involved in this claim, and one of two parties to agreements governing rules, rates of pay and working conditions existing between the Carrier and the employes covered by the agreements, and as such the General Committee is authorized and qualified to individually and collectively represent the employes in such disputes or conferences as may arise or be conducted in connection with the application of rules, rates of pay or working conditions whose proper application is a matter of mutual or joint responsibility.

Regarding the contention of the Carrier as to its non-liability for the acts of a separate organization, viz: the Railway Express Agency, Inc., and that if the employes are entitled to reimbursement such claim is against the Express Agency and not the Carrier; further that there is no rule in the agreements which establishes a commission rate to be paid Agents or which prohibits reductions in such rates, the Board submits that Articles 13 and 15 of the three existing agreements between the parties deal with express commissions, and while no specific rates are shown in the agreements and no specific reductions are prohibited, these rules indicate that the wage scale of the several Telegraphers' agreements represents the basic wages of the employes and, while such rates or commissions were not wholly discontinued, they were discontinued in part, and the fact that such basic wages as were originally negotiated were disturbed and reduced without any adjustment of the salary affected being made, and without conference and agreement between the parties, cannot but place a definite responsibility for such disturbance and reduction upon the Carrier.

In further connection with the responsibility of the Carrier as it pertains to the disturbance in and reduction of the basic wages established by agreement between the parties, the Board submits that the citations of rules and agreements existing over a long period of years prior to the rules and articles of the current agreements, can have no other effect as they pertain to this instant claim than to indicate that the express commissions paid to Agents, have for a long time been an important factor in determining the compensation of Railroad Agents serving as joint agents for the railroad and express

company; and further establish the fact that the commission on express shipments formed a definite means of establishing the basic wages to be paid by the railroad for the service of the Agents in the performance of their railroad duties. As for the creation of the Telegraphers Adjustment Board to adjudicate disputes between the parties, the General Committee has submitted a valid and reasonable statement, both as applies to the statement made on August 28, 1930, with respect to pending disputes, and the fact that in the few days following the making of a formal protest with relation to the reduction in express commissions the claim had not progressed to a point where it was ready for submission to the Telegraphers Adjustment Board.

Under the conditions outlined the Board submits that the Carrier has advanced no valid objection or denial to the jurisdiction of this Third Division of the National Railroad Adjustment Board and rules that the instant case and the subject involved is properly before the Board.

Considering the merits of the case in connection with the outline given in this opinion, the facts are 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 commission or compensation the Agents were to receive from the performance of those duties, incident to their railroad work, which were performed for the Express Agency; and, while the fact is conceded that the Express Agency took the initiative in the reduction of express commissions and rates, the fact is further evidenced that the Express Agency could not have made these reductions without the concurrence of the Carrier.

In view of these conditions, the Board submits that the Carrier was the primary and governing employer of the agents affected in this claim; that agreements existed between the parties in which the specified rates or wages established in such agreements for agents handling express shipments were predicated on the commissions or compensation paid by the Express Agency, as the secondary employer of the agents affected; and that such changes as were made in the express commissions or compensation by the Express Agency with the consent and concurrence of the Carrier, and without conference and agreement between the principals of the existing agreements between the Carrier and the General Committee, violated the terms and principles of the existing agreements between the parties.

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 commissions without conference and agreement, the Carrier violated the terms and principles of the existing agreements between the parties.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By order of Third Division

ATTEST: H. A. Johnson,
Secretary.

Dated at Chicago, Illinois, this 2nd day of December, 1937.