Award No. 866
Docket No. TE-859

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Dozier A. DeVane, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY

(Wilson McCarthy and Henry Swan, Trustees)

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers on the Denver and Rio Grande Western Railroad Company that the hourly rate of the position of Agent-Telegrapher at Sugar House, Utah shall be 84 cents per hour, effective as of the date the collection and delivery of express business at Sugar House was transferred from that station to Salt Lake City, Utah."

STATEMENT OF FACTS: "There is in existence an Agreement between the parties to this dispute effective as to rules January 1, 1928 and effective as to rates of pay, August 1, 1937.

"On page 22 of the Agreement effective January 1, 1928, a position as Agent-Telegrapher, Sugar House, Utah, Salt Lake Division, is listed at the hourly rate of 62 cents. This rate was increased to 67 cents per hour effective August 1, 1937.

"The dispute covered by this brief is predicated upon the transfer of the collection and delivery of the Railway Express Agency business at Sugar House, Utah to the office of the Railway Express Agency at Salt Lake City, Utah, this action depriving the occupant of the Agency position at Sugar House of commissions enjoyed by him because of handling the business of the Railway Express Agency."

POSITION OF EMPLOYES: "The rule upon which this claim is based is Rule 19, relating to express and telegraph commissions which we quote for ready reference:

> 'When express or Western Union 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.'

"Employes of the carrier required to perform service for the Railway Express Agency by the carrier are primarily an employe of the carrier, but because of the existence of a contract between the carriers and the Railway Express Agency, such employes are, in a secondary manner, employes of the Railway Express Agency.

reduced the express commissions at Sugar House, and since January 1, 1938, the Commissions have been discontinued entirely.

"January 7, 1937, the Organization requested that as result of the discontinuance of express commissions at Sugar House, effective November 1, 1936, the rate at that point be increased from 62 to 84 cents per hour in accordance with the provisions of Rule 19. Copy of this letter is attached hereto as Carrier's Exhibit No. 1.

"At the time the Organization presented their letter of January 7, 1937, they were advised that the express commissions had not been entirely discontinued and as result, on February 8, 1937, they withdrew their claim of January 7, 1937. Copy of letter of February 8, 1937, attached hereto as Carrier's Exhibit No. 2. On April 9, 1937, the Organization advised as result of express commissions being eliminated at Sugar House as of January 31, 1937, they desired to reinstate claim as presented in their letter of January 7, 1937.

"Rule 19 reads:

> 'When express or Western Union 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.'

"It will be noted that Rule 19 provides that when express or Western Union commissions are discontinued at any office, that adjustment of the salary affected will be made conforming to rates paid for similar positions. We are advised by our Freight Accounting Department, whose Traveling Auditors are familiar with all station offices, that Murray and Midvale Utah Stations are similar to the Sugar House station, and attached hereto as Exhibit No. 3 is statement showing number of way bills issued, expense bills written, passing way bills handled and the amount of station revenue by years for the period 1933 to 1937, inclusive, for Midvale, Murray and Sugar House stations.

"The present rates of pay for the Agent at Sugar House is 67 cents per hour. At Midvale it is 75 cents per hour, and at Murray 73 cents per hour.

"We have made adjustment in some rates of Agents at points where express commissions were discontinued, such adjustments being from 3 to 10 cents per hour. We have never made, and Rule No. 19 does not contemplate, any such adjustment as the Organization requested in this case.

"During negotiations in connection with this dispute, the Carrier offered to increase the rate of pay at Sugar House 8 cents per hour, however, when not accepted by the Organization the Carrier withdrew the offer.

"The freight handled at Sugar House, Murray and Midvale is largely car load business, there being very little L. C. L. merchandise handled at either point, and for that reason, together with the information furnished by our Accounting Department, the Agents' jobs at Murray and Midvale were selected as positions being similar to the one at Sugar House.

"The Carrier contends, in view of the work required of our Agent at Sugar House, compared with other stations having approximately the same rate of pay, there is no justification for the rate of pay contended for by the Organization in this case, and further contends that neither the provisions of Rule 19, or the past application in connection therewith, warrants making the rate of pay for the Agent at Sugar House 84 cents per hour."

OPINION OF BOARD: When the rate of pay for the agent-telegrapher was established at Sugar House, Utah, the fact that the agent also handled express business was taken into consideration and the rate of pay as agent-telegrapher was made somewhat lower on that account than at other comparable points where no express business was handled. Rule 19 of the prevailing agreement provides:

> "EXPRESS AND TELEGRAPH COMMISSIONS. When express or Western Union 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."

At a later date the express business was taken away from the agent at Sugar House and given to the Express Agency at Salt Lake City, Utah. The parties agree that under rule 19, it then became necessary to make an upward adjustment of the rate of pay for the agent-telegrapher at Sugar House, but they were unable to agree upon the amount of increase, and the dispute was progressed to this Division for decision.

The Brotherhood selected as similar positions for comparable purposes the agencies at Garfield and North Salt Lake City, Utah. At the time the former paid 84 cents per hour and the latter 80 cents. Both have since been increased by 5 cents per hour. The agents at neither of these stations handle express business. The claim of the Brotherhood is for the same rate of pay as that paid the Agent at Garfield.

Carrier used Murray and Midvale, Utah, as comparable stations. The present rate of pay at the former is 73 cents per hour and at the latter 75 cents. The agents at both stations also handle express business for which they are paid commissions in addition to the pay received as agents for carrier. These stations are not truly comparable since the agents also receive express commissions, but notwithstanding this fact the Board is of the opinion the record contains sufficient information to enable it to make final disposition of the dispute.

The Board has carefully considered the record as to the business handled at Garfield and North Salt Lake City, and is of the opinion that the latter station is more nearly comparable with Sugar House. It, therefore, holds that the rate of pay for the agent-telegrapher at Sugar House should be the same as that paid the agent at North Salt Lake City.

The record is not so clear as to the date on which the increased rate of pay should be made effective. There was a change in the method of handling express business at Salt Lake City, Utah, early in 1932, and the Brotherhood contends that this change greatly reduced the amount of express business handled at Sugar House. The record further shows that the change in tariffs closing Sugar House as an express agency became effective November 1, 1936.

This Board held in Award No. 297 that it would be highly technical to hold that a material reduction in express commissions would not require a revision of the wage rate. That was a case where the express commission rate paid was very materially reduced. There was no reduction made in the commission rate paid the agent at Sugar House—the drop in revenue was the result of a drop in business handled. The record shows that this drop in business began in October 1931, and thereafter very little express business was handled at Sugar House. It is, therefore, evident from the record that the change in the method of handling express business at Salt Lake City early in 1932 was not the sole or direct cause for the loss of express business at Sugar House.

North Salt Lake City had also been an express agency prior to November 1, 1936, and the tariff effective as of that date also closed that station as an express agency, whereupon it became necessary to readjust the rate of pay of the agent at said station. The parties agreed to an increase in pay for the agent at North Salt Lake City effective November 1, 1936. The change in the method of handling express business at Salt Lake City early in 1932 (extending limits of pick-up and delivery service) applied to the territory served by North Salt Lake City as well as Sugar House, and while the effect of this change upon the express business at North Salt Lake City is not shown, as heretofore pointed out, the record shows that other causes contributed to the loss of the express business at Sugar House. A mere change in the volume of express business handled occasioned by a business depression or other similar causes is not in and of itself sufficient to justify an increase in the rate of pay to the agent.

The Board is of the opinion that the increase in the rate of pay for the agent-telegrapher at Sugar House should be made retroactively effective as of the same date it was made effective at North Salt Lake City. The rate of pay at North Salt Lake City, effective as of November 1, 1936, was fixed at 80 cents per hour. This rate of pay was increased to 85 cents per hour effective August 1, 1937. These rates of pay should be applied in this case.

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 claim should be sustained as indicated in the opinion.

AWARD

Claim sustained as indicated in opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 20th day of June, 1939.