

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

James H. Wolfe, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers on the Louisville & Nashville Railroad Company that the hourly rate of the position of agent-operator at Wetumpka, Alabama, shall be 88 cents per hour, effective as of October 7, 1935, the date the express commissions were discontinued, and subject to the increase of five (5¢) per hour effective August 1, 1937, applied to all positions covered by the Telegraphers' Agreement, and that all employees occupying the position be so paid retroactive to October 7, 1935."

JOINT STATEMENT OF FACTS: "An agreement bearing date of October 1, 1927, is in existence between the parties.

"The position of agent-operator at Wetumpka, Alabama, is shown on page 45 of the agreement at an hourly rate of 78 cents per hour. On the same division of the railroad (South and North Alabama) and found on page 46 is the position of Agent-Operator at Sylacauga, Alabama, hourly rate 83 cents per hour. By general increase these agencies were raised August 1, 1937, to 78 and 88 cents per hour respectively. Prior to October 7, 1935, the agent-operator position at Wetumpka was a joint railroad-express agency handling express business for which commissions were paid. Effective that date the express agency was removed from the station and express commissions discontinued. The position of agent-operator at Sylacauga, Alabama, was not on October 7, 1935, nor has since been a joint railroad-express agency."

POSITION OF EMPLOYES: "For many years prior to October 7, 1935, the position here involved was maintained as a joint railway express agency; that is, the railroad station agent was required by the carrier to also serve the Express Company as express agent. The joint agency was compensated on a salary basis by the railroad for the agent's services as railroad agent, and on a commission basis by the Express Company for agent's service as express agent.

"During all of these years the Railroad Company was legally deemed the transporter of express as it was of freight, but by means of a Uniform Contract for Express Operations between the railroad company and the then American Railway Express Company, the Express Company was granted the exclusive right and privilege to conduct and transact all of the Railroad Company's express transportation business over its lines. This method of conducting and transacting the Railroad Company's express transportation business was continued in effect until March 1, 1929, when on this date the railroad company participated with some eighty-five (85) other railroads in

"(2) Aside from the foregoing, the agency at Wetumpka, Ala., is now paid higher than any agency of like importance, work and duties."

OPINION OF BOARD: Prior to October 7, 1935, the agent-operator position at Wetumpka was a joint railroad-express agency handling express business for which commissions were paid. Effective that date the express agency was removed from the station and express commissions discontinued.

It is agreed between the parties to the dispute that for some months prior to October 7, 1935, the express commissions accruing at Wetumpka, Alabama, averaged \$39.00 per month.

Rule 20 of the prevailing agreement provides:

"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 rate paid for similar positions."

It is the position of the Brotherhood that when the Express Agency was removed from the railroad agency at Wetumpka resulting in a very substantial reduction in the total compensation of the agent at that point, in accord with provisions of Rule 20 of the agreement prompt adjustment should have been made in the salary of this agent to conform to rate paid for similar positions, and that, accordingly, such comparison should be made with the position of agent-operator at Sylacauga, Alabama, which was not on October 7, 1935, nor has it since been a joint railroad-express agency.

It will be noted that Rule 20 does not require the railroad to make an adjustment in all events when there is a withdrawal of express or Western Union commissions. If the salary after the decrease or cessation of commissions still conforms to the rate paid (excluding commissions) for similar positions, the claimant has no case. See Award 908. The claimant contends that Wetumpka compares with Sylacauga which carries a rate of 88¢. The carrier contends that it compares with Holt, Siluria and Hartselle, drawing respectively 75¢, 66¢ and 73¢ per hour. The last two stations do not have express commissions. Neither the agent at Wetumpka nor Sylacauga handle passenger business. Wetumpka is located at the end of a six mile branch line. Sylacauga has a cashier, one clerk and a trucker. Wetumpka has only a clerk in addition to the agent.

Judging from the revenues over a fifty-four month period from October, 1935 to April, 1940 (which gives some indication of the volume of business handled), the average monthly earnings at Sylacauga were \$4,367.79 in excess of Wetumpka. Of course mere volume of revenue is not necessarily controlling. Diversity of duties, financial accountability, requirement of skill and training, contact with the general public and development of new business are relatively as important. See Award 182. But in these tests applied the two stations are not similar.

The carrier makes the further point that on the L. & N. express commissions were never taken into consideration in fixing agent-operator's rates, citing instances where express commissions had attached and increased after the rates of pay had been established and carrier had not reduced the rate. The petitioner counters with a showing that the express commissions were an ingredient in the general level of rates fixed by Decision 2 of the U. S. Railroad Labor Board, effective May 10, 1920, which resulted in a reduction of 3¢ per hour from the 13¢ granted to substantially all other classes of employees; also that the 3¢ an hour which became effective June 1, 1924 was distributed by mutual agreement non uniformly over various stations, giving Wetumpka an increase of only ¼¢ an hour, while Sylacauga obtained 4¼¢ an hour. From this fact an inference may be drawn that it was considered

that the positions were not substantially comparable and that Sylacauga was out of line.

Unquestionably there is implied in Rule 20 the conception that the express and telegraph commissions were an element in fixing rates at those stations where they were enjoyed, for thus flows the necessity for adjustment when commissions are discontinued. The evidence is impressive however that the L. & N. did not take the commissions into consideration in fixing the rates. This is intrinsically illustrated by the rate at Wetumpka. The \$39.00 per month before it was taken away was equivalent to 13¢ per hour to the agent-operator. This added to 78¢ would have made his rate 91¢ per hour, which is above the 88¢ for Sylacauga, a station itself, as we have shown, whose business reasonably demands a greater rate than Wetumpka. But whether it did or not, the real question under Rule 20 is: When there was a reduction in total compensation by withdrawal of commissions should the remaining compensation have been enhanced to equal the rate at Sylacauga. We do not find that Sylacauga was a "similar position" in the sense that Wetumpka should command the same rate, hence the claim is denied.

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 employees involved in this dispute are respectively carrier and employees 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 Sylacauga was not a "similar position" to Wetumpka in the sense that the latter station should command the same rate as the former.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 20th day of December, 1940.