

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Herbert B. Rudolph, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers on Southern Pacific Company (Pacific Lines) that the established express commissions made effective April 1, 1931 and paid to the joint railway-express agents as Coachella, Thermal and Mecca, California, Los Angeles Division, on all express transportation business picked up by trucks in their respective designated districts which commissions were arbitrarily discontinued May 1, 1938 by the Railway Express Agency, shall be restored as of the date discontinued and that the joint railway-express agents at these agencies be compensated retroactively at the established rates for all express shipments handled in this manner since May 1, 1938."

EMPLOYES' STATEMENT OF FACTS: "Effective April 1st, 1931, the Railway Express Agency, Inc., inaugurated a truck pick-up service at Mecca, Coachella and Thermal, Los Angeles Division points, initially hauling the commodities picked up in the territory contiguous to each station to that particular station. With the improvement in highways it became the increasing practice to make consolidation points at either of these stations, usually Mecca as this district generally originated the greater volume of business and when one of the three stations was used as a consolidated loading point, the other two stations paid the agent at such consolidated loading station 75 cents per ton loading charge for labor used in handling the commodities originating in the territory of the two other stations. Later, Indio, also a joint agency for the Carrier and the Railway Express Agency, Inc., as were Thermal, Coachella and Mecca, was permanently designated as the consolidated loading station, all commodities picked up in the Mecca, Thermal and Coachella districts were hauled to Indio and the arrangement covering payment for labor costs mentioned above was carried out by the joint agents at Mecca, Thermal and Coachella to the joint agent at Indio.

"Effective May 1st, 1938, the agency at Indio was discontinued as a joint railroad-express agency, the Railway Express Agency, Inc. established an agency independent of the railroad agency at Indio and coincident therewith, the joint agents at Mecca, Thermal and Coachella were advised by Route Agent Haley of the Railway Express Agency, Inc. that the pick-up service would be continued, the consolidated loading at Indio would be continued, but that no longer would commissions be paid the agents at Mecca, Thermal and Coachella upon business picked up in their respective districts that was carried to Indio for loading.

"This action of the Railway Express Agency, Inc. in depriving the joint agents at Mecca, Thermal and Coachella of commissions on commodities

'(c) Telegraphers required to serve express or commercial telegraph companies will have the right to complain of unsatisfactory treatment at the hands of said companies and will receive due consideration from the railroad company.' (Underscoring for emphasis.)

"Throughout all of the proceedings between the respondent and petitioner, the respondent has made its position clear in that respect.

"The respondent at no time has dealt with the Railway Express agency in connection with this dispute, except to the extent that it was necessary to give consideration to the complainant under Rule 33 (c) by presenting the petitioner's contentions to the Railway Express Agency and in turn communicating the substance of its reply or position to the petitioner. Respondent has completely and fully complied with Rule 33 (c).

"It has called upon the Railway Express Agency for such information as contained herein only because it was considered proper to furnish the Board with all available facts and other data that were obtainable. The respondent in no particular is acting for or in behalf of the Railway Express Agency in this proceeding.

"As initially stated in this submission, the respondent respectfully challenges the authority of the Board to assume jurisdiction over this claim as directed against the respondent. Rule 33 heretofore quoted in its entirety, is the only contractual obligation existing between petitioner and respondent dealing with express commissions. That arrangement depends upon the uncontrollable action of a third party, Railway Express Agency, Inc., as the commissions were in the first instance established by that Company. As heretofore shown in the Statement of Facts, the respondent neither participated nor was it a party to the Agreement of March 24, 1931, nor any other agreement between the Railway Express Agency, Inc., and the respective Agents, covering the payment of express commissions at Coachella, Thermal and Mecca.

"Factually, the situation is that of an employe of two companies. The employes serve both the Southern Pacific Company and Railway Express Agency, Inc. As respects the Express Company and its business, the Agents are responsible to the Express Company for the business handled for it, and the Express Company has the power to direct them in the manner in which they shall perform work for that Company.

"The Agent is also an employe of the Southern Pacific Company; for it he does most of his work and most of his compensation is paid by the Railroad Company.

"If the employes have a claim at all, and we are not prepared to admit that they have in face of the facts that have been furnished by the Railway Express Agency, it is against the Railway Express Agency and not against this respondent. The Board should, in our opinion, find that the respondent was improperly made a party to the dispute, and that the Board is without jurisdiction to entertain the claim.

"If, however, the Board should assume jurisdiction, it is again urged that the claim be declined on the basis that it is without merit and that no agreement provision sustains it."

OPINION OF BOARD: On May 1, 1938, the Railway Express Agency discontinued the payment of commissions to the agents at Mecca, Thermal and Coachella, California, upon commodities picked up in the territory contiguous to each of these stations. For some time prior to May 1, 1938, the Railway Express Agency had maintained a pickup service in this territory, and for the goods thus picked up had maintained a consolidation point from which the goods were shipped. The territory surrounding Mecca, Thermal and Coachella was districted and any of the goods picked up within the

district assigned to Coachella was credited to that station and the agent paid a commission thereon with certain deductions for handling and loading charges; this was also true of goods picked up in the districts assigned to Mecca and Thermal. On May 1, 1938, there was established at Indio an independent express agency and following this date the goods picked up in the districts assigned to Thermal, Mecca, and Coachella were transported to Indio and handled through the independent agency which was, prior to May 1st, a joint Railway Express Agency and operated under the same circumstances as the three other stations. With the establishment of this independent agency at Indio the payment of commissions to the three remaining joint agencies was discontinued on all goods "picked up" by the Railway Express Agency. Commissions are still paid on any goods brought to the agents for shipment, but the income of these agents has been substantially reduced by the discontinuance of commissions upon the goods shipped through the pick up service.

Rule 33 of the agreement between the parties is, as follows:

"(a) 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.

"(b) Telegrapher who, in addition to performing wire work, renders Western Union accounts will be considered Manager and receive two-thirds (2/3) of the total commission, balance of commission to be prorated to other telegraphers who receive and/or transmit commercial business.

"(c) Telegraphers required to serve express or commercial telegraph companies will have the right to complain of unsatisfactory treatment at the hands of said companies and will receive due consideration from the railroad company."

The claimants base their claim upon Subdivision (c) of the above quoted rule, and contend that this subdivision was violated when the Railway Express Agency without conference deprived them of their commissions upon business originating in their districts through the method disclosed in the statement of facts.

The carrier contends first, that this board is without jurisdiction to consider this claim as a claim against the railway company, and asserts that, if a claim exists, that it is one against the Railway Express Agency. Carrier made this same contention in Docket Number TE-325, Award No. 392, and we quote at length from this board's response to that contention:

"The carrier's principal contention is that this Board is without jurisdiction to deal with the dispute here presented in the matter of express compensation, since the character of that compensation and all policies with respect thereto are fixed by agreements or understandings between the employes and the Railway Express Agency to which the carrier is not a party. Such contentions have frequently been urged upon this Board, and it appears to be its established view that these contentions are without merit. The disputes involving express compensation uniformly arise in connection with employes who are serving as joint railway-express agents. Primary employment is with the railroad, but under agreement between the railroad company and the express company, express service is also performed by these employes. Express compensation constitutes a part of the total compensation received by the employes, and this is true whether the express compensation takes the form of percentage commissions or of periodic payments for transfer or other service. Because of the intimate relationship existing between railroad compensation and express

compensation, coupled with the fact that the extent and character of the express service to be performed is necessarily within the general control of the railroad, it has been repeatedly recognized that a sound and realistic adjustment of the relations between the three parties justifies procedure against the railroad company in connection with grievances against the express company. In the instant case not only are all of these grounds for assuming jurisdiction present, as well as the fact that the Southern Pacific Company is part owner of the Railway Express Agency, but in addition the Telegraphers' Agreement to which the carrier is a party expressly provides, in Rule 33 (c), that 'telegraphers required to serve express or commercial telegraph companies will have the right to complain of unsatisfactory treatment at the hands of said companies and will receive due consideration from the railroad company.' Under these circumstances there can be no doubt whatever that jurisdiction may properly be assumed by this Board. Compare Award No. 387, Docket TE-401, rendered by this Division February 24, 1937, and see Awards 181, 218, and 297 cited therein."

This Board has held in a long line of awards that responsibility attaches to a railway company when the express payments received by joint railway-express agents in connection with the handling of express are arbitrarily reduced. Cf. Awards 297, 313, 315, 387, 392, 507, 522, 528, 537. The claim now before the Board presents a somewhat different situation than that involved in the above awards so far as the facts are concerned, but we cannot determine that there is any difference in principle. In this case the wages of the joint agents at Mecca, Thermal and Coachella were just as effectively reduced by the action taken as these wages would have been, had the commissions the agents received been reduced on a percentage basis. The reasoning upon which a violation is determined is that "express commissions are considered in establishing the wage scales of the agents of joint-railway-express agencies," and that any reduction of this wage scale other than a reduction through the normal fluctuations in business constitutes a reduction of wages in violation of the agreement. As was stated in Award No. 313:

"When, however, one or two of the three parties takes deliberate action the inevitable effect of which must be to impair the benefits that constituted the consideration upon which the contract was based, then clearly the party whose benefits are impaired is entitled to redress."

Clearly the inevitable effect of the action of the express agency in depriving the joint agents at Mecca, Thermal and Coachella of the commissions they had formerly received upon the business originating in their districts impaired the benefits which these agents were receiving under their primary employment with the railway company, and which benefits were taken into consideration when the wage scale for these agents was determined.

We think it clear that, under the prior holdings of this Board, this claim must be sustained. These holdings are numerous and long established, having the sanction of various referees, and should not now be disturbed.

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 under the prevailing telegraphers' agreement responsibility attaches to the Southern Pacific Company (Pacific Lines) to effect reimbursement for

monetary loss sustained by its joint railway-express agents at Thermal, Mecca and Coachella as the result of the action of the Railway Express Agency in depriving these agents of commissions upon goods shipped through the pickup service.

AWARD

Claim sustained to the extent that agencies be compensated retroactively at the established rates for all express shipments handled through the pickup service since May 1, 1938 on the same basis they were compensated for such shipments prior to that date.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 10th day of January, 1941.