

Award No. 1702
Docket No. TE-1733

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Edward M. Sharpe, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
THE 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, Denver and Rio Grande Western Railroad, that the hourly rate of the agent at Eureka, Utah, shall be 85¢ effective with the discontinuance of that point as an express office May 2, 1940.

JOINT STATEMENT OF FACTS: The Order of Railroad Telegraphers and the Denver and Rio Grande Western Railroad Company have an agreement dated January 1, 1928, re-issue December 1, 1939, covering wages and working conditions of the employees thereon. Eureka, Utah, an agent-telegrapher position, is listed in the wage scale on page 20 of this agreement. Prior to May 2, 1940, the incumbent of the position at Eureka handled express business for which he received a commission. On May 2, 1940, Eureka was discontinued as an express agency thereby depriving the occupant of said position at Eureka of commissions enjoyed by him because of handling the business of the Railway Express Agency.

POSITION OF EMPLOYEES: This claim is predicated upon the provisions of Rule 19 of the current agreement which we quote below 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."

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

In fixing the hourly rate of compensation for the position of agent-telegrapher at Eureka, express commissions were taken into consideration and were a governing factor in arriving at the rate shown in the Contract of Agreement which is quoted herein. It was in consideration of the knowledge on the part of both the carrier and the organization of this fact that the rule quoted as the basis of this claim was agreed to.

At the time the hourly rate of 62¢ at Eureka was published in the Agreement effective January 1, 1928 (increased to 67¢ an hour August 1, 1937), the express commissions at Eureka approximated \$60.00 monthly and this approximate express commission was recognized in the fixing of the hourly rate of pay, and while this fact is generally understood and well recognized by the Board we call attention to the further convincing fact that the rate schedule effective January 1, 1928 carried three stations at which the agents did not receive express commissions, namely, Dividend, Utah, located a few miles from Eureka, 82¢ an hour; Bingham, Utah, located near Eureka, 81¢ an hour; and Garfield, Utah, which is also located near Eureka, 84¢ an hour (plus 5¢ increase August 1, 1937). Dividend, Bingham, Gar-

It will be noted the receipts at North Salt Lake were over four times and the receipts at Sugar House were over thirty times the average receipts of Eureka for the three months in question.

The Carrier has been unable to find any positions in this territory that are closely similiar to the position at Eureka as most of the stations on branch lines where the billing of mine products was the main duty of the occupants have been closed in recent years due to decline in this character of business. A survey was made by the traveling auditor of the carrier who covers Salt Lake Division territory and his report is quoted below:

"The work at North Salt Lake consists mostly of handling of perishable shipments, which requires more intricate work than at the ordinary station where the business consists of dead freight.

"At Sugar House, the inbound business shows about four times as many items as are handled at Eureka, and it requires much more time to handle all of these collections, while at Eureka the outbound shipments are heavier, which do not require near as much handling, and the nature of the duties at these stations cannot very well be compared.

"The rate of pay at these two stations is 85¢ per hour.

"I might also add, our agents at Manti and Ephraim have more duties to perform than the agent at Eureka, yet their salaries are only 65¢ per hour, and the express commission will amount to \$15.00 or \$16.00 per month."

The carrier contends that its offer in this case was more than reasonable and respectfully requests that the claim of the organization should be denied.

OPINION OF BOARD: The Order of Railroad Telegraphers and the Denver & Rio Grande Western Railroad have an agreement dated January 1, 1928, reissue December 1, 1939, covering wages and working conditions of the employes therein. Eureka, Utah, an agent-telegrapher position, is listed in the wage scale of this agreement.

Prior to May 2, 1940, the incumbent of the position at Eureka handled express business, for which he received a commission. On May 2, 1940, Eureka was discontinued as an express agency, thereby depriving the occupant of said position at Eureka of commissions enjoyed by him because of handling the business of the Railway Express Agency.

Rule 19 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 rates paid for similar positions."

and all parties agree that an adjustment in the rate of pay for this position is due under the provisions of Rule 19, but the parties are in disagreement as to the amount of adjustment in the rate which should be made.

It is the position of the employes that North Salt Lake and Sugar House, Utah, on the Salt Lake Division, with an hourly rate of 85¢ are "similar positions" upon which the decision in this case should prevail.

It is the position of the Carrier that North Salt Lake and Sugar House, as stations, are not comparable and that there is no similar position on this division with which to compare the rates; that the term "similar position," as appearing in Rule 19, requires comparative consideration and the finding of reasonable parity in the duties and responsibilities of agent-telegrapher;

that station revenues and cash receipts are but one of many factors in such consideration; that the commodities handled at the three stations upon which the employee's compensation is made are different; that at North Salt Lake livestock by the carload is the principal commodity; that at Sugar House general merchandise is the principal commodity and is often handled in less than carload lots. At Eureka minerals and mining products are handled in carload lots.

It would be difficult, if not impossible, to find an identical station with which to compare the station at Eureka; factors that should be taken into consideration in making such a comparison are the hours employed by such agent, the volume of business handled, the total revenues received, the similarities of the commodities handled as well as the nature of the loadings, whether in carload lots or in less than carload lots.

In our opinion, based upon the tests above enumerated, the stations of North Salt Lake and Sugar House are similar within the meaning of Rule 19. The record justifies our holding that in 1928 the rate of 62¢ per hour at Eureka was determined by the fact that the commission from the express business amounted to approximately \$60 per month, and that, if in 1928 the agent at Eureka had been placed on a straight salary without commission, the rate of 62¢ per hour then paid would have been materially increased.

This method of fixing rates of pay was recognized in Award 366, wherein the Board stated:

"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."

and as stated in Award 181:

"Express commissions are a part of the basic compensation of the employees in question and cannot be reduced by the respondent carrier except in the manner provided in the agreement."

Here it is shown that following the establishment of the rate of 62¢ per hour for the position of agent-telegrapher at Eureka, in which the express commissions were taken into consideration, an arrangement was entered into between the railroad company and the express agency whereby the express business from Eureka was thereafter transported by the Utah Central Truck Lines but The Order of Railroad Telegraphers was not a party to such an arrangement.

It is further shown that the action taken by the railroad company and the Railway Express Agency had the inevitable effect of impairing the benefits that constituted the consideration upon which the contract was based, and clearly the party whose benefits are impaired is entitled to redress.

The Board is of the opinion that the hourly rate of pay for the agent-telegrapher at Eureka, Utah, should be made 85¢ effective with the discontinuance of that point as an express office, May 2, 1940.

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 employee involved in this dispute are respectively carrier and employee 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.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 6th day of February, 1942.