

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Bruce Blake, 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 the Southern Pacific Company, Pacific Lines, that Agent-telegrapher W. H. Hancock, Tahoe, Sacramento Division, be paid express commission on shipment originally destined to Tahoe, diverted by the Railway Express Agency and delivered by the Railway Express Agency at Truckee, the amount of commission due Agent-telegrapher Hancock being \$9.66.

**EMPLOYES' STATEMENT OF FACTS:** Claimant Hancock was the joint agent for the Southern Pacific Company (Pacific Lines) and the Railway Express Agency, Inc., at Tahoe, Sacramento Division, on the date the claim originated. A shipment of express consigned Johnson Rock Company at Myers, Calif., via Tahoe, Calif., from Thew Shovel Company, Lorain, Ohio, carrying charges \$96.60, arrived at Truckee, the transfer point, enroute Tahoe, was held at Truckee by the exclusive Railway Express Agency Company, Inc. agent at that point and delivery made at Truckee.

Claim for commission was filed by the joint agent at the destination point and payment of commission has been refused.

There is an agreement in effect between the parties to this dispute and that agreement is on file with this Board.

**POSITION OF EMPLOYES:** EXHIBITS "A" to "N" inclusive are shown and made a part of this submission.

The claim is filed and prosecuted under Rule 33 (c), which we quote:

"RULE 33

Express and Telegraph Commissions

(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 Committee states that the Claimant was the victim of unsatisfactory treatment by the Railway Express Agency, Inc.

EXHIBIT "A" shows that the consignee of the shipment under consideration expected it to be delivered at Tahoe by the Railway Express Agency.

stage; Pacific Motor Trucking was not operating and the shipment was too large and too heavy to be carried by Pacific Greyhound stage. The consignee decided not to wait until Monday for the shipment and accepted delivery of said shipment at Truckee on Sunday; therefore, it was through no fault of the express company that the shipment was not forwarded to Lake Tahoe and handled by the claimant. The consignee had the right to accept delivery of its shipment at Truckee and it merely exercised this right.

The Division's attention is directed to its Award 1533 which involved the same parties as in the instant case. In this award a corpse shipment was billed from Bisbee to Findley, Ohio; however, the undertaker brought the corpse (in his hearse) from Bisbee to Bisbee Junction, where it was placed in the express car of train No. 4. The Division, with Referee George E. Bushnell sitting, held that the said shipment originated at Bisbee Junction and reasoned as follows:

"Ruling Case Law states, in Volume 4, Page 695, Carrier's paragraph 174, in effect that a bill of lading or other receipt is not ordinarily essential to a complete delivery and we reason from this that a waybill is merely prima facie evidence of delivery to the carrier. Complete control by it is essential to liability. Since liability could not attach until after unconditional surrender of the corpse by the undertaker and the acceptance of it by the express company we are constrained to hold that the shipment originated at Bisbee Junction notwithstanding the issuance of the waybill at Bisbee and the revenue accounting at that point based on a tariff with Bisbee as the originating station."

Applying the same line of reasoning to the instant case we find that the shipment to the Johnson Rock Company terminated at Truckee when the express company unconditionally surrendered the shipment to said consignee. From that time the express company was free of any liability in connection with the shipment. The mere fact that it was originally billed to Lake Tahoe would not make Lake Tahoe the point of destination.

The Division will note the inconsistency of the petitioner in the claim involved in Award 1533 and the claim in this docket. In the one case it takes the position that the point where the shipment is billed from is entirely immaterial, and in the other case it takes the position that the point where the shipment is billed to is controlling.

The Division's attention is directed to the fact that the express company paid the agent at Truckee the express commissions. To have likewise paid the claimant would have resulted in the double payment of express commissions for the same shipment.

#### CONCLUSION

The carrier asserts that it has conclusively established that the claim in this docket is without merit and respectfully submits that it should be denied.

**OPINION OF BOARD:** Claimant is agent-telegrapher at Lake Tahoe station. His compensation derives, in part, from express handled at that point for Railway Express Company. His claim is for \$9.66 commission on express, diverted to the consignee at Truckee, which, in usual course of shipment under its billing, would have been handled by claimant at Lake Tahoe.

The circumstances of, and reasons for the diversion of the shipment are fully set out in the statements of the parties appearing in the record; and it is unnecessary to repeat them here. It will suffice to say that the diversion was made under an arrangement agreed to by the consignee and the exclusive agent of the Railway Express Company at Truckee. The consignee actually took delivery at that point.

We do not think there can be any doubt as to the right of a consignee, with the consent of the carrier, to divert express in transit. To hold that, notwithstanding such diversion, the agent at point of destination is still entitled to a commission for handling the shipment would impose a penalty on the carrier which is not contemplated by the agreement.

Rule 33 (c), relied on by claimant, merely provides:

**"EXPRESS AND TELEGRAPH COMMISSIONS**

**"(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."**

Awards Nos. 387, 866 and 1321, cited in support of the claim, bear no analogy in fact to the situation presented here. On the other hand the facts in Award No. 1533 are so closely analogous as to render that decision controlling of this.

There, the shipment was billed from Bisbee, Arizona, which is on a branch eight miles from the main line. Although billed from Bisbee, the shipment was conveyed by the consignor to Bisbee Junction where it was delivered to the carrier. In a carefully considered opinion it was held that, since the carrier's legal responsibility for the shipment did not begin until actual delivery and acceptance, Bisbee Junction was the point of origin. Consequently the claim for commission by the agent-telegrapher at that point was sustained.

In principle that case is indistinguishable from this. The carrier's responsibility ended at Truckee upon delivery of the shipment to the consignee; and by the same token, under the decision in Award No. 1533, the claimant acquired no right to a commission on the shipment.

**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 the carrier did not violate the agreement.

**AWARD**

Claim denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of Third Division

**ATTEST:** H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 31st day of March, 1944.