

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

James M. Douglas, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**NEW YORK CENTRAL RAILROAD COMPANY,
LINE WEST OF BUFFALO, INCLUDING OHIO CENTRAL LINES**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on New York Central Railroad Company Line West of Buffalo, that the action of the Railroad Company in arbitrarily agreeing with and permitting the Railway Express Agency, Inc., without just cause, and without conference and agreement with The Order of Railroad Telegraphers, to remove arbitrarily express agent M. O. Keough from his position of joint railway ticket-express agent at Clyde, Ohio, on May 22, 1944, was improper and in violation of the Telegraphers' agreement and the Memorandum of Conference of June 26, 1926, on Express Commissions as joint agencies; and that ticket agent Keough shall be restored to his express agency and be reimbursed retroactively to the date he was arbitrarily removed, in the amount of express commissions he would have earned had he not been arbitrarily and improperly removed.

EMPLOYES' STATEMENT OF FACTS: An agreement bearing date of February 1, 1943, as to rates of pay and rules of working conditions is in effect between the parties to this dispute.

A Memorandum of Conference bearing date of June 26, 1926, as to express commissions at joint agencies is also in effect between the parties to this dispute.

The joint railway ticket-express agent position at Clyde, Ohio, involved in this dispute, is covered by these agreements. M. O. Keough is regularly assigned thereto.

Effective May 22, 1944, the New York Central Railroad Company Line West of Buffalo arbitrarily agreed with and permitted the Railway Express Agency, Inc., to arbitrarily remove the joint railway ticket-express agent at Clyde, Ohio, from his express agent position without just cause, thereby arbitrarily reducing the average monthly compensation of this agent in the amount of the express commissions he would have earned had he not been thus removed.

POSITION OF EMPLOYES: This dispute involves the handling of the Rail Company's express transportation business by the Rail Company's station agents for the Railway Express Agency, Inc., which is appointed by the Rail Company to conduct and transact its express transportation business on its lines through a contract termed the "Express Operations Agreement."

Certain Sections of the Express Operations Agreement between the New York Central Railroad Company and the Railway Express Agency, Inc., amply support this statement; to wit:

"Whereas, the Rail Company has united with other carriers operating railroads in the continental United States to acquire through their own

(CONCLUSION:)

1. The railroad does not agree with the organization that the Memorandum of Conference of June 26, 1926 is interpreted to relate to any change contemplated in the existing methods of handling express business at stations, including the creation or separation of express agencies. We have never agreed to such an interpretation. There is no rule in the agreement or understanding requiring the Express Agency to use the railroad agent as its agent, or to prevent the discontinuance of such an arrangement where previously in effect.
2. The Telegraphers used the same argument in Docket TE-2578, Award 2555, involving a dispute for restoration of express business at Mentor, Ohio, a station located on this same property. The Board denied the claim and Referee Shake, speaking for the division, stated in part—"We do not believe that this subject was within the contemplation of the parties to the above agreement when they provided that there should be no change in 'the basis of commission' without negotiation."
3. The carrier denies that the removal of the express business from M. O. Keough, Ticket Agent-Telegrapher at Clyde, Ohio, was either improper, unjust or in violation of the Telegraphers' agreement or the Memorandum of Conference of June 26, 1926.

It is the railroad's final contention that the claim in this case is entirely without merit and should be denied.

OPINION OF BOARD: Formerly Railway Express maintained its own Agency at Clyde, Ohio. When its representative was inducted into the armed forces in 1942 it made an arrangement with Keough, the Ticket Agent-Telegrapher, to take over the express work and discontinued its own agency. Thereafter the 1943 Agreement showed the position at Clyde received express commissions. Keough's hours were subsequently changed so a caretaker handled the express on the early morning train. The Organization protested. To save the additional expense of \$73.00 per month which would have been imposed by Keough's handling express outside his regular hours the independent express agency was re-established and Keough was discontinued as joint express agent.

Organization claims a joint ticket-express agent listed in the wage scale of the Agreement cannot be removed as express agent without negotiation. It relies on a statement in a Memorandum of Conference between Carrier and Organization dated June 26, 1926 which, with other matters, stated:

"It is understood that the American Railway Express Co., will not make any change in the present basis of commission without first conferring with the representatives of the Railroad Company, and the latter will in turn confer with the representatives of the employees before any action is taken."

It is our view that the statement is not relevant to the issue raised by this claim. It deals with the "basis of commission" to be paid for handling express. This is made plain by the balance of the Memorandum which discusses the percentage to be paid as commissions. The Memorandum does not touch on the question of establishing or discontinuing joint agencies.

Article 18 of the Agreement contemplates that express commissions may be created or discontinued at any office without imposing any restriction on the carrier except an adjustment of salary. It 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."

Award 1466 discusses at length the relationship of carrier and employee when the latter is used as a joint agent. It quotes from Award 297 which states that express commissions are interwoven with wages paid by a carrier. It holds that joint agents may not be discontinued as express agents **arbitrarily**. In reaching that

decision and sustaining the claim the award points out that discontinuing the joint agencies there involved was not an economy move but was done arbitrarily and without just cause.

The decision in this claim must consequently turn on whether discontinuing Keough as a joint agent was arbitrary and without just cause. Carrier candidly asserts it was an economy measure. Its argument concedes it would have been obligated to pay Keough additional compensation for meeting the morning train at a time outside his regular assigned hours. To save this expense the independent express agency was restored. It was returned to the same status which existed before the war brought about the change. It cannot be said that under the circumstances such action was arbitrary. Therefore the claim must be 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 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 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 2nd day of November, 1945.