

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, 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 Telegrapher C. O. Still, Eugene, Oregon, Portland Division, shall be reimbursed for loss of Western Union commissions suffered during the period January 18th, 1944, through May 4th, 1945, in an estimated amount of \$486.25, as a result of the actions of the Southern Pacific Company in requiring the Western Union Telegraph Company to place an employee at the Eugene passenger station to receive all Western Union telegrams from passengers enroute on trains No. 18, 19 and 24 and carry all such telegrams to the uptown Western Union telegraph office for transmission, thereby depriving Telegrapher Still at the Southern Pacific station telegraph office of the commission on these telegrams which he would have received had they been handled by Telegrapher Still in the normal manner and in accordance with the practice prior to and subsequent to the period for which claim is made.

EMPLOYEES' STATEMENT OF FACTS: For many years prior to January 18th, 1944, Claimant Still, employed as telegrapher at the passenger station at Eugene, Oregon, assigned hours 8 A.M. to 4 P.M., received Western Union telegrams from passengers on trains passing through Eugene, Oregon, during his tour of duty, as well as from other patrons not traveling on trains. He accepted and transmitted this business, collecting the tolls thereon and for performing this service, was paid 10% commission on all business sent prepaid, this commission being considered a part of his compensation.

On January 18th, 1944, through action of the officers of the Carrier and upon their request, the Western Union Telegraph Company sent a clerk from their up-town office in Eugene to meet trains Nos. 18, 19 and 24, soliciting and accepting Western Union business formerly handled by Claimant Still.

This practice continued in effect until May 4th, 1945, at which time the Western Union Company discontinued using their clerk and the business was again handled by Claimant Still in the same manner that it has been handled since May 4th, 1945.

The diversion of the Western Union business during the period for which claim is made was instituted solely by officials of the Carrier, their contention being that the handling of this Western Union business interfered with the handling of the business of the Carrier, even though it had been handled in this same manner for many, many years; in fact, since Eugene, Oregon, was established as a station on the railroad and has been successfully handled subsequent to May 4th, 1945, without impairing the service rendered to the Carrier.

the claimant was unable to properly handle his duties as telegrapher-clerk during the period of time trains 18, 19 and 24 were in the station due to the fact that the volume of telegrams submitted to him by passengers on said trains was such that he could not properly handle them, and likewise perform his duties as telegrapher-clerk, and the further fact that conductors of trains 18, 19 and 24 were unable to register, check train register, receive and check train orders due to the confusion in the claimant's office created by passengers endeavoring to file telegrams with the claimant.

It is immediately evident from the foregoing analysis that although Rule 33 was relied upon by the general chairman, said rule in point of fact in no way supports the claim.

The claim in this docket is for a monetary payment to the claimant of an estimated amount of \$486.25. As to how the petitioner arrives at this estimated amount is not understood. However, such point is entirely immaterial for the reason that if it be the petitioner's position that paragraph (a) of Rule 33 supports the claim, then it will be noted that in the application of paragraph (a), if such paragraph were applicable, the action that would be taken would be to adjust the salary of the claimant so that it would conform with rates paid for similar positions. In the first place, there was no basis for adjusting the salary of the claimant for the reason that Western Union commissions were not discontinued during the period January 18, 1944, to May 4, 1945. During said period the claimant continued to receive commissions on telegrams handled by him other than from passengers on trains 18, 19 and 24. It will be noted that paragraph (a) does not contemplate an adjustment in the rate of pay merely because telegraph company commissions are decreased; the sole basis for adjustment of salary is when telegraph company commissions are discontinued in their entirety. In the second place, if an adjustment in the rate of pay of the claimant were justified under paragraph (a), which it was not, such adjustment would have to conform to rates paid for similar positions and on this basis, if telegraph company commissions were discontinued in their entirety there still would have been no basis for adjusting or increasing the claimant's rate for the reason that said rate would still conform with the rate paid for similar positions.

The Division's attention is directed to the fact that the claimant's primary duties were that of telegrapher-clerk. The matter of handling telegrams for the telegraph company was entirely secondary to said duties. While the carrier had no desire to deprive the claimant of any commissions that he received from the telegraph company for handling telegrams, it definitely had the obligation to see that the claimant properly and completely performed his primary duties as telegrapher-clerk; therefore, when the time arrived that the claimant was unable to properly perform said duties due to his handling of telegrams from passengers on trains 18, 19 and 24, and when the handling of said telegrams interfered with conductors properly carrying out their duties which resulted in delays to passenger trains it was entirely proper, and in no way violative of the agreements, to relieve the claimant of handling said telegrams; even though said action may have resulted in a loss to the claimant of a certain amount of commissions by the claimant, the fact remains that he received from the carrier a salary in accordance with the provisions of the agreements and therefore the agreements were in all respects complied with.

CONCLUSION: The carrier submits that it has conclusively established in this, its ex parte submission, that the claim involved in this docket is without basis, and therefore respectfully submits that it is incumbent upon the Division to deny said claim.

OPINION OF BOARD: For many years prior to January 18, 1944, Claimant was an assigned telegrapher at Eugene, Oregon. It was a part of his duty to receive Western Union telegrams from passengers on trains and other patrons for transmittal. For this he was paid 10 per cent commission on all prepaid business as a part of his compensation. The Carrier

caused Claimant to be deprived of this work from January 18, 1944, to May 4, 1945. This claim is for the commissions lost during this period, amounting to \$486.25.

The decision turns upon the meaning of Rule 33 (a) of the Agreement dated September 1, 1927 and of Rule 33 (a) of the Agreement dated December 1, 1944. These two rules are:

"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." Rule 33 (a), 1927 Agreement.

The Carrier argues that the foregoing rules apply only when telegraph commissions are wholly discontinued and that they have no application where, as here, a part only of the work was taken from the Claimant. This contention is not only technical, but it lacks merit as this Board has held. Award 313. Where, as here, the Carrier takes deliberate action the inevitable effect of which is to impair the benefits constituting a part of the employee's compensation, the employee is entitled to redress under Rule 33 (a).

The rule does not, however, make the Carrier liable for the commissions lost. It provides that where such commissions are discontinued a prompt adjustment of the salary affected will be made conforming to rates paid for similar positions. There is nothing in the record from which we can determine the increase in compensation to which Claimant would be entitled during the period he was deprived of these commissions. The claim will, therefore, be remanded for further handling on the property in accordance with Rule 33 (a) as it is herein interpreted. Award 908.

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 parties waived oral hearing thereon;

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 Agreement was violated by the Carrier.

AWARD

Claim remanded in accordance with the views expressed in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 25th day of April, 1947.