

Award No. 3937

Docket No. TE-4109

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

ATLANTIC COAST LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Order of Railroad Telegraphers on the Atlantic Coast Line Railroad Company, that H. F. Hennessy was unjustly dismissed from the service on July 20, 1947, and

"a" shall be restored to his position of Agent at Pinellas Park, Florida, with seniority and pass rights unimpaired, and

"b" shall be paid for all time lost and Express Commissions until restored to his position as Agent at Pinellas Park, Florida.

OPINION OF BOARD: The evidence of record in this case does not support the charges. Claimant should be restored to service with seniority rights unimpaired and compensated in accordance with paragraph (g) of Article 18 of the Agreement.

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 claim will be sustained in accordance with the Opinion.

AWARD

Claim sustained in accordance with the Opinion and Findings.

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

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 11th day of June, 1948.

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

INTERPRETATION NO. 1 TO AWARD NO. 3937
DOCKET TE-4109

NAME OF ORGANIZATION: The Order of Railroad Telegraphers.

NAME OF CARRIER: Atlantic Coast Line Railroad Company.

Upon application of the representatives of the Employees involved in the above award, that this Division interpret the same in the light of the dispute between the parties as to its meaning, as provided for in Section 3, First (m) of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

The record shows that the Organization appealed to this Board from a dismissal of the Claimant, H. F. Hennessy, from the service of the Carrier. After a hearing before the Third Division, a sustaining award was entered "in accordance with the Opinion." The applicable portion of the opinion states:

"Claimant should be restored to service with seniority rights unimpaired and compensated in accordance with paragraph (g) of Article 18 of the Agreement."

Article 18 (g) provides:

"If the final decision decrees that charges against the employee were not sustained, the record shall be cleared of the charge; if suspended or dismissed, the employee will be returned to former position and paid for all time lost."

The evidence shows that Claimant was regularly assigned to the agency at Pinellas Park, Florida, at the time of his wrongful dismissal. This was an agency handling express and the compensation paid included express commissions in addition to a fixed salary. The question for decision is whether the Carrier, in complying with the Award, is required to pay salary and express commissions lost during the period of his wrongful dismissal, or whether the fixed salary only is owing.

Article 16 of the Agreement bears upon the question and is here quoted:

"In event the express agency is withdrawn from an agency (except by request of the agent) the compensation of the agent will be readjusted to conform to rates paid at similar stations on the District where the agent does not also act as express agent. Should the express agency be re-established the railway salary will be reduced the same amount that it was increased at the time separation was made."

We think the foregoing provision clearly indicates that the compensation of an agent having express agency duties to perform includes both the fixed salary and the express commissions. The fact that a loss of the express work requires a larger fixed salary under the agreement is indicative of this assertion. Express commissions are not earnings in excess of a fixed salary, but they are a part of the compensation paid. When express commissions

disappear, the agreement provides for a larger fixed salary for the same service performed for the Carrier. They definitely influenced the amount of compensation Claimant was to receive. The fixed salary and express commissions were not wholly separate and distinct payments for two separate and distinct services. Whether or not express commissions were applied determined which of two contractual rates of pay constituted the compensation of the position. There was one rate of pay when express commissions were included and another rate when they were not, but in either event there was but one position and one rate of pay. We think it is clear that the fixed salary and express commissions together determine a single compensation for the agent when express work is included and that the words "compensated in accordance with paragraph (g) of Article 18 of the Agreement", contained in the Board's opinion, contemplate that Claimant shall be reimbursed for fixed salary and express commissions accruing during the period of his dismissal from service as payment "for all the time lost" within the meaning of Section 18 (g) of the current agreement.

Referee Edward F. Carter participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 10th day of February, 1949.