

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
THE NEW YORK CENTRAL RAILROAD COMPANY
(Buffalo and East)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central Railroad, Buffalo and East, that

(A) the Carrier violated Memorandum of Conference of June 26, 1926, when and because, on or about March 1, 1947, said Carrier unilaterally removed the handling of certain Railway Express Agency business from the Stuyvesant Joint Agency, which caused and is causing a wage loss to the incumbent agent, and

(B) in consequence thereof the railway express business which was unilaterally removed from Stuyvesant Joint Agency, shall be restored as formerly, and

(C) the incumbent of the position of agent-telegrapher at Stuyvesant, New York, shall be reimbursed retroactively to the date that the change was made in the handling of the express business, and in amount of express commissions he would have earned had the change not been made in this improper manner.

EMPLOYES' STATEMENT OF FACTS: An agreement by and between the parties, herein referred to as the Telegraphers' Agreement, bearing effective date of January 1, 1940, is in evidence; copies thereof are on file with the National Railroad Adjustment Board.

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-express agency at Stuyvesant, New York, which is involved in this dispute, is covered by these agreements.

Effective on or about March 1, 1947, the Carrier unilaterally removed the commission of 18% paid to the joint agent at Stuyvesant for handling LCL express business at the station as well as the pick-up and delivery service. This express commission covered the handling of express shipments for Stuyvesant proper, as well as the surrounding towns of Kinderhook, Niverville and Claverack, as well as other small factory towns in this area.

On or about March 1, 1947, without negotiating with the Organization as required by the rules, the Carrier permitted or required the Railway Express

Award No. 3531

"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."

"AWARD: Claim remanded in accordance with the views expressed in the Opinion."

CONCLUSION

In conclusion, Carrier feels that the facts as set forth regarding the Memorandum of Conference of June 26, 1926 substantiate the Carrier's position that this "Memorandum" has no application in the instant dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to March 1, 1947, the agent at Stuyvesant, New York, handled express in addition to the ordinary duties of his position. Express for Stuyvesant Falls, Valatie, Niverville and Kinderhook were also routed through Stuyvesant and handled by truck from that point. For this extra work, the agent was allowed a commission of 5% on carload lots, 10% on less than carload lots, and 18% on all express delivered to the named outlying points. The 18% commission included the cost of trucking the express for Stuyvesant Falls, Valatie, Niverville and Kinderhook, this being an expense assumed by the agent. At the request of the agent (Ellison) at Stuyvesant, the Railway Express Company cancelled its contract with the agent at Stuyvesant with the approval of the Carrier. Thereafter, commencing on March 1, 1947, the express formerly handled at Stuyvesant for Stuyvesant Falls, Valatie, Niverville and Kinderhook has been handled from Niverville. This change in express handling has resulted in a loss in express

commissions at Stuyvesant of approximately \$100 per month. The Organization contends that the method of handling this situation constituted a violation of applicable Agreements. The present claim was filed to correct the alleged violation and to secure commission losses sustained by the agent (successor to Ellison) at Stuyvesant.

The Organization contends that the transferring of the express for the named outlying points was a violation of the Memorandum of Conference of June 26, 1926. The pertinent part of that Memorandum is as follows:

"It is understood that the American Railway Express Co., will not make any change in 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. Further, the few local conditions that the employees now feel should receive consideration will be taken up and handled locally."

The record shows that the Memorandum of Conference of June 26, 1926, was an unsigned Memorandum growing out of a conference resulting from the demands of the telegraphers for a uniform commission for handling of express. We think it is binding upon the parties participating as to its contractual provisions, it having been recognized by the parties in subsequent correspondence. But it shows upon its face that it dealt only with commission rates for the handling of express. It contains nothing to indicate an intention to freeze the income of agents handling express, either by preserving an existing annual earning or guaranteeing a stated volume of business. We are of the opinion, therefore, that it was commission rates only that were attempted to be preserved by the understanding.

The Organization urges that commission rates were changed without negotiation. They point out that the 18% rate was reduced to 10%. We think the Organization misconceives the manner in which this alleged change came about. The 18% rate applied to express destined to the outlying points. It consisted of the 10% commission for handling and an additional 8% to cover trucking charges. When express destined to the outlying points was diverted elsewhere, there was no express handled which was subject to the trucking charge of 8%. The rate was not changed, there simply was no express handled to which it applied. We conclude that the routing of express for Stuyvesant Falls, Valatie, Niverville and Kinderhook to Niverville instead of Stuyvesant, did not change the basis of commission as that term is used in the Memorandum of Conference of June 26, 1926.

That there is a relationship between the rate of pay of an agent as fixed by the Carrier and commissions paid for handling express is generally recognized. The Telegrapher's Agreement recognizes this relationship by the inclusion of Article 18 therein. Article 18 states:

"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." (Article 18, current Agreement.)

We have cited no rule, nor do we know of any, which protects an agent against operations that may bring about a decline in the volume of express business at a given point. The very method of compensation for handling express is indicative of an uncertainty of volume upon which a fixed compensation could be reasonably based. We are obliged to say that an agent handling express has no recourse under the Memorandum of Conference of June 26, 1926, for a loss of income resulting from a reduction in the volume of express handled. Award 2555. His remedy is contained in Rule 18, current Agreement. The claim is denied without prejudice to any rights existing under Rule 18 of the controlling 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 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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 17th day of October, 1949.