

**Award No. 6488**

**Docket No. TE-6530**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**LeRoy A. Rader, Referee**

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**PARTIES TO DISPUTE:**

**THE ORDER OF RAILROAD TELEGRAPHERS**

**THE ATCHISON, TOPEKA AND SANTA FE  
RAILWAY COMPANY (Coast Lines)**

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on The Atchison, Topeka and Santa Fe Railway; that:

1. Due to a decrease in the average monthly compensation account discontinuance of certain Western Union commissions, an adjustment shall be made in the rates of pay for three positions located at Antioch, California.
2. The adjustment to cover an increase in the rate of pay applicable to the position of telegrapher-cashier in an amount of four (4) cents per hour, and an increase in the rate for two positions of telegrapher-clerk in an amount of two (2) cents per hour.

**EMPLOYES' STATEMENT OF FACTS:** Agreements bearing effective dates of December 1, 1938 and June 1, 1951 between the parties to this dispute are in evidence.

For many years, possibly from the time a station was first established at Antioch, California, telegraphers therein handled all Western Union telegrams transmitted and received under a contract between the Carrier and the Western Union Telegraph Company. On all telegrams sent paid and received collect the telegraphers received ten per cent commission based on the amount collected at that station. On August 1, 1949, the Western Union Company established an office elsewhere in the city which was open during the daylight hours each day and Western Union employees thereafter handled practically all Western Union telegrams to and from Antioch during the hours said office was open. During the hours the Western Union uptown office is closed the telegrams are handled by the telegrapher-clerks in the Santa Fe station at Antioch, California.

The establishment of the uptown office at Antioch resulted in a considerable reduction in pay for the telegraphers employed in the Railway station. For the years 1946, 1947, and 1948 the average commission accruing to the telegraphers at the station amounted to an average of \$33.50 per month.

purposes of applying Article XV, nor have they submitted any factual evidence whatsoever to support their claim that the rates of pay of the telegrapher-cashier and the telegrapher-clerks at Antioch should be increased four and two cents per hour, respectively.

It should, therefore, be crystal clear from the foregoing that the Employees' claim in the instant dispute is not only improper, but contrary to the terms of Article XV of the Telegraphers' Agreement and should be either dismissed or denied in its entirety.

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In conclusion, the Carrier respectfully asserts that the Employees' claim in the instant dispute is manifestly an attempt to repudiate their thirty years recognition that Article XV of the Agreement was a nullity and was entirely without force or effect under conditions such as those involved in the instant dispute. The Carrier further asserts that the Employees' claim is entirely without merit or support under the Agreement rules and should, for the reasons advanced herein, be either dismissed or denied in its entirety.

All that is herein contained has been both known and available to the Employees or their representatives.

(Exhibits not reproduced.)

**OPINION OF BOARD:** There is agreement on the facts in this claim to the extent that Respondent has historically been obligated by the terms of its contract with the Western Union Company to handle its commercial telegraph business whenever necessary at its stations where telegraph operators are employed. For many years at Antioch, California, telegraphers handled all telegrams transmitted and received and under certain conditions received commissions on such business. On August 1, 1949, Western Union established an uptown office at Antioch which was open during day time hours and business at such time was handled by that company's employees. The establishment of this office resulted in reduction in pay for telegraphers employed at Respondent's Antioch station. These telegraphers, claimants herein, had a voluntary arrangement whereby the operator on the first trick, 8 A. M. - 4 P. M., had a contract with the Western Union Company and he was designated manager therein. By arrangement with operators on the second and third tricks the operator on the first trick shared a portion of the commissions paid by Western Union with operators of second and third tricks.

The basis of the claims in brief: 1. Due to decrease in the average monthly compensation by reason of discontinuance of certain commissions previously paid, an adjustment be made in rates of pay for the three positions; and, 2. An increase of four (4) cents per hour on the first trick and an increase in the rate of pay for positions, second and third tricks, in the amount of two (2) cents per hour.

Cited in support of Petitioner's position is Article XV of the Agreement effective June 1, 1951, which reads:

"Sec. 1. 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 shall be made conforming to rates paid for similar positions in the same seniority district."

This dispute arises on the interpretation of this article.

Respondent takes the position that although commissions may be reduced by reason of the establishment of the city office of the Western Union Company at Antioch, this does not meet the contract provision by being

"discontinued." Petitioner takes the position that it is the intent of the words of the article to adjust rates when such a situation occurs.

The correct contract interpretation favors the position taken by Respondent as should we interpret this article as calling for an adjustment by any change in conditions it might well be a continuing process as commissions could fluctuate from time to time and under such an interpretation a precedent would be set for continuing adjustments. In other words, reading such a meaning into Article XV would be to change the meaning thereof. Commissions were not discontinued at Antioch, in its present status. As shown by the record, there has been a reduction in the same and we do not think that even though there were positive evidence that commissions were discontinued as to the first truck position it would warrant such an interpretation by reason of the wording of the article in that the word "discontinued" is used in connection with, or in relation to, the words "at any office." In order to warrant a sustaining award on such a premise the word "office" would have to be interpreted to mean "to any position."

We find that the wording of Article XV is not ambiguous and therefore not subject to interpretation enlarging or extending its clear meaning.

**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 there is no violation of the Agreement.

#### AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon  
Secretary

Dated at Chicago, Illinois, this 11th day of February, 1954.