

Award No. 6798

Docket No. TE-6649

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE NEW YORK, NEW HAVEN AND HARTFORD
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York, New Haven and Hartford Railroad that:

(1) The Carrier violated the provisions of the agreement between the parties when on April 30, 1952 it unilaterally removed the handling of certain Railway Express Agency business from the North Haven joint agency, causing a wage loss to the incumbent agent; and

(2) In consequence thereof the Railway Express business which was unilaterally removed from the North Haven Joint Agency shall be restored as formerly; and

(3) The incumbent of the position of agent at North Haven, Connecticut shall be reimbursed retroactively to the date that the change was made in the handling of express business in amount of express commissions he would have earned had the change not been made.

EMPLOYES' STATEMENT OF FACTS: An agreement bearing effective date of September 1, 1949, as to rates of pay and working conditions is in effect between the parties to this dispute, hereinafter referred to as the Telegraphers' Agreement.

The agreement contains a schedule listing stations which handle express business in addition to railroad freight and passenger business, stipulating the commission paid for handling Railway Express business by agents in employ of the Carrier. This agreement covers the agent position at North Haven, Connecticut.

The Agent at North Haven has for many decades acted as joint railroad and express agent at this location, handling any and all business for the Railway Express Agency in addition to his regular railroad assignments. For such express service the Railway Express Agency with the approval

circumstance that might be calculated to disturb the continuance of a steady flow of business at a given point. 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."

In Award 4578 the New York Central agent at Stuyvesant had formerly handled, and been paid a commission on, express traffic for four neighboring towns. Upon substitution of direct truck transfer to those towns, the Stuyvesant agent filed claim which eventually resulted in the cited denial award. The opinion says:

"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."

Similarly in this case the parties have agreed upon a commission which results in earnings based upon the volume of business the North Haven agent is required to handle. The commission itself may not be changed except by agreement. But there is no guarantee of the amount it will produce, this being left to be determined by the flow of business.

It follows the claim as presented finds no basis in the schedule and should be declined in every particular.

All of the facts and arguments used in this case have been affirmatively presented to Employees' representatives.

OPINION OF BOARD: Claimant is an agent-operator at North Haven, Conn. On April 30, 1952, the Railway Express Agency instituted a truck service operating from New Haven, Conn., which serviced a number of its patrons within the corporate limits of North Haven. The result was that the handling of considerable express business was eliminated at North Haven with consequent loss of commissions to claimant.

The employees contend that claimant is entitled to handle any and all express business originating and consigned to the town of North Haven. In support of this contention, they cite Article 32 of the Agreement which reads as follows:

"Express commissions, transfer allowances and pick up and delivery allowances as in force on the effective date of this agreement, are the basic commissions and allowances and will not be changed except by negotiation between the parties to this agreement. It is understood that by 'changed' is meant increased or decreased and does not refer to discontinuance where the handling is eliminated, or establishment where not previously handled."

No contention is made that the rate of commission paid to claimant was changed in any way. From its clear language it is apparent that under Article 32, the Carrier is bound to protect the agent from unilateral decreases in the basis upon which commissions and allowances are figured, despite the fact that the real party in interest to wit: The Railway Express Agency, is not a part to the contract. Under this Article of Agreement, however, the Carrier has not assumed to protect the agent from fluctuations in the amount of earnings from express commissions and allowances whether those fluctuations be brought about because of decreased consignments or

shipments of express or because of the Express Company making a change in the handling of its business. (See Awards 2555, 4578 and 4792).

No other rule has been cited to us nor do we find any in the Agreement which would support a claim of this nature. We find the claim to be without rule support and hence find that a denial Award is indicated.

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 July 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: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 27th day of October, 1954.