

Award No. 7183
Docket No. CLX-7140

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES**

RAILWAY EXPRESS AGENCY, INC.

STATEMENT OF CLAIM: Claim of the District Committee of the Brotherhood that:

(a) The Agreement governing hours of service and working conditions between Railway Express Agency, Inc. and the Brotherhood of Railway & Steamship Clerks, Freight Handlers, Express & Station Employees, effective September 1, 1949, was violated at the Ashdown, Arkansas Agency, April 1, 1953, when the Carrier arbitrarily reduced the earnings accruing to the position of Agent by the elimination of the fixed service allowance of \$60.00 per month and subsequent removal of the position from the scope and operation of the Agreement;

(b) Said service allowance shall be restored as a part of the monthly compensation or earnings of the position of Agent and that it shall be restored under the scope and operation of the agreement, bulletined and assigned; and

(c) Melvin Reese and all other employees adversely affected be compensated for difference in salary and earnings loss sustained retroactive to and including April 1, 1953.

EMPLOYEES' STATEMENT OF FACTS: Ashdown, Arkansas is an Exclusive Commission Agency and prior to April 1, 1953 Agent Melvin Reese was compensated on the following basis:

20% on all traffic handled;
33 1/3 % commission on financial paper sold;
20% commission on C.O.D. service charges.

Minimum monthly earnings—\$165.00, maximum monthly earnings—\$180.00.

Arbitrary monthly allowance of \$60.00 for services upon which no commission was earned.

The Company furnished motor vehicle utility bills and furnished pick-up and delivery service to patrons.

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1953. A denial of the claim in its entirety is in order for the reasons fully set forth herein by Carrier.

All evidence and data set forth have been considered by the parties in correspondence and conference.

(Exhibits not reproduced.)

OPINION OF BOARD: The confronting claim concerns an exclusive commission agency at Ashdown, Arkansas. Employee Melvin Reese was the agent and was compensated on a commission basis, with the respondent here furnishing a motor vehicle and paying the utility bills. The position in question had minimum monthly earnings of \$165.00 and maximum monthly earnings of \$180.00. Ashdown was a transfer point between the Kansas City Southern, Frisco and the GN&A Railroads. In addition to the commission earnings, the claimant was paid an "arbitrary" or monthly allowance in the amount of \$60.00 for performing transfer service in connection with the named carriers.

The record indicates that the transfer service between the Kansas City Southern and the Frisco was discontinued on August 9, 1951, while such service was discontinued on the GN&A on January 1, 1953.

The respondent discontinued payment of the \$60.00 monthly transfer allowance on April 1, 1953; however, it is clear that claimant received same on a pro-rated basis through April 22, 1953.

At the final termination of the transfer allowance in the amount of \$60.00, Claimant Reese, after protesting individually and through his organization gave up the commission agency and entered train service.

The record discloses that this position was then bulletined with a \$165.82 monthly rate, without an applicant acceptable to the respondent bidding therefor. Thereupon the respondent secured the services of an individual described as a "merchant agent" to serve as its representative at Ashdown, with a minimum salary of \$100.00, maximum of \$150.00; thus, the respondent asserts, removing the position (because the minimum salary was less than \$125.00 monthly) from the scope of the agreement, within the meaning of Rule 1 (b).

Rule 1 (b) provides as follows:

"These rules shall not apply to:

(b) Individuals performing a particular service requiring only a part of their time from other occupation or business. Individuals whose services are necessary to care for emergency conditions which are beyond the control of the Agency and which cannot be handled by regular or unassigned employees. Railroad employees paid on a commission basis and other commission agents receiving a net monthly income of \$125.00 or less. Net income to be arrived at by deducting from gross commission such items as rent, telephone, light and vehicle expense, as well as amounts paid to others employed by them. Where net commission so arrived at is disputed, status will be determined by joint survey between the Management and the General Chairman."

Petitioners contend that the monthly allowance of \$60.00 was an integral part of the minimum-maximum guarantee and should have been added to the respective bases thereof, thus raising the minimum from \$165.00 to \$225.00 monthly and the maximum from \$180.00 to \$240.00, rather than arbitrarily discontinuing same. It is asserted that if this were done the monthly rate would remain above the alleged required minimum of \$125.00, which the respondent asserts (but not admitted by the organization) is the

criteria for determining whether or not a position remains within the scope of the effective agreement.

The Board concludes that the \$60.00 monthly allowance was not a part of the basic guaranteed earnings, and was an "arbitrary" paid for performing transfer services for the above named carriers, and was properly subject to discontinuance when the existence thereof or need therefor ceased. However, it is likewise noted that in the event any portion of the said monthly allowance was considered as compensation for performing local pickup and delivery service the same (in its pro-rated amount) was improperly discontinued without prior negotiation with the organization.

Thus we come to the questioned propriety of the respondent's removal of the said exclusive commission agent's position from the scope of the agreement and the hiring of a "merchant agent" to perform the duties (except the transfer service above mentioned) formerly performed by Employee Reese.

The respondent's bulletin of April 22, 1953, which in effect sought a replacement for Employee Reese, advertised that the position had "commission earnings" averaging \$165.82 over a 6-month period. No mention was made of any transfer allowance. In fact, the respondent's basis for its discontinuance thereof was that the need therefor ceased to exist prior to the issuance of the said bulletin. We, therefore, conclude that the position, for which no applicant satisfactory to the respondent was found, in truth and in fact had commission earnings (exclusive of transfer allowances) greater than the monthly minimum set out in Rule 1 (b).

Thus the Board concludes and so finds and holds that the discontinuance of the monthly allowance (for transfer service between the three named railroads) was not in contravention of the effective agreement; that the position of exclusive commission agent was improperly removed from the scope of the agreement; and that all employees (if any) adversely affected thereby shall be made whole for any loss sustained.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the 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 the effective Agreement was violated to the extent indicated in the Opinion.

AWARD

Claim (a) sustained to the extent stated in the last paragraph of the Opinion.

Claims (b) and (c) disposed of in accordance with the above Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 28th day of November, 1955.