

Award No. 10551
Docket No. TE-8613

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION
(Supplemental)

J. Harvey Daly, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago, Milwaukee, St. Paul and Pacific Railroad that:

1. The agent at Morton Grove, Illinois, was denied his established commission on an express shipment from that station.
2. Agent G. J. Bales now be paid an amount equal to 5% of the revenue on carload express shipment of monkeys and cats shipped from Morton Grove, Illinois to Washington, D. C., on January 27, 1954.

EMPLOYES' STATEMENT OF FACTS: Carrier's Morton Grove, Illinois station is located 14 miles northward from downtown Chicago on Carrier's Chicago-Milwaukee District. Claimant's position at Morton Grove is a joint railroad-express agency with the Carrier here having jurisdiction over all of Claimant's service, whether railroad or express, pursuant to an agreement entered into by the Rail Company and the Express Company, Article XI of which specifies that the Express Company may arrange with the Rail Company for railroad employes to act as agents of the Express Company to handle express at railroad stations. The agency at Morton Grove was such an arrangement on the date in question.

Rule 18 of the current Agreement (a copy of which is available to your Board), provides:

"When express or commercial telegraph 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."

Rule 28 specifies:

"This agreement supersedes all previous agreements, shall be effective as of September 1, 1949, and shall continue in effect until

tention upon a rule of the schedule agreement that was found to be inapplicable.

In denying the claim the Board held that "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." Such is the case here and a denial award is in order.

All information contained herein has been made known to the employees.

OPINION OF BOARD: On January 27, 1954, the Baxter Laboratories shipped a carload of cats and monkeys by Railway Express from Morton Grove, Illinois, to the National Institute of Health, Washington, D. C.

Morton Grove is a joint railroad-express agency about 14 miles north of Chicago. The express operation work is under the jurisdiction of the Evanston Express Agent but the Claimant is under the control and jurisdiction of the Carrier.

The Claimant, Relief Agent G. J. Bales, was on duty at Morton Grove at the time the above shipment moved out. However, the shipment was handled, billed and moved out by the Express Agency's exclusive agent at Evanston.

The Organization contends that the Claimant is entitled to the commission because the shipment originated at and moved out of Morton Grove and that the agent at Evanston had no right to handle the shipment. The Organization, however, cited no rule to support its claim nor did the Organization claim on the property that the Carrier violated any rule of the controlling Agreement dated September 1, 1949. Nor did the Organization cite any custom or past practice to support its position.

The Carrier, on the other hand, in addition to claiming that it violated no rule of the controlling Agreement, also states that Morton Grove, is only a receiving agency and that the agent is entitled to commissions only on traffic received over the counter and handled and billed by him. The Carrier also revealed that on May 1, 1953, the Morton Grove Express Office was transferred by the Railway Express Agency from the Western Illinois-Eastern Iowa Division No. 45 to Chicago Terminal Division No. 56, designated as a receiving agency only, and placed under the jurisdiction of the exclusive Express Agency at Evanston. The Organization did not deny that the Railway Express Agency had the right to make the above transfer.

In the instant case, the Claimant did not receive, handle, waybill or move out the carload shipment.

The record shows that the Railway Express Agency had paid commissions to the agent at Morton Grove. However, the record also indicated that those commissions were for LCL Express shipments handled by the agent on over the counter shipments.

The Organization cited Rule 18 of the Agreement in its Ex parte Submission without alleging that Carrier violated that rule—which rule reads as follows:

"RULE 18 — EXPRESS AND TELEGRAPH COMMISSIONS

"When express or commercial telegraph 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."

The clear and concise language of that rule reveals that it has no application whatsoever to the instant case and, therefore, it must be disregarded. Consequently, no rule violation can be charged against the Carrier.

A trenchant analysis of the awards cited by the Organization did not give support and comfort to its position. Therefore, they must be disregarded.

Accordingly, we must hold that this claim is without merit and must be denied.

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

The Organization did not claim that the Carrier violated the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of April 1962.