

**Award No. 11440**

**Docket No. TE-10141**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**David Dolnick, Referee**

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**PARTIES TO DISPUTE:**

**THE ORDER OF RAILROAD TELEGRAPHERS**

**CHICAGO GREAT WESTERN RAILWAY COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago Great Western Railway that:

1. Carrier violated and continues to violate the agreement between the parties when, because of express commissions being discontinued, it failed and refused to adjust the rate of the position of Agent at Sycamore, Illinois to conform with a rate paid a similar position.
2. Carrier be required to adjust the rate of the position of Agent at Sycamore, Illinois to conform with that of the position of Agent at Eagle Grove, Iowa (a similar position) to be effective August 9, 1956.

**EMPLOYES' STATEMENT OF FACTS:** The agreements between the parties are available to your Board and by this reference are made a part hereof. The rule with which we are primarily concerned in this dispute is Rule 21 which reads:

"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 rate paid for similar positions."

Express commissions were discontinued at Sycamore effective August 9, 1956. No adjustment was made or has been made. On the date cause for this claim arose the monthly rate of the position of Agent at Sycamore was \$303.12, the monthly rate of the position of Agent at Eagle Grove was \$405.32. The express commission payments at Sycamore had been averaging \$140.48 per month.

When the express commissions were discontinued at Sycamore, the Employees called this to the attention of the Carrier and suggested an adjustment be made to conform to the Agent position at Bellwood, Illinois bearing a monthly rate of \$442.23. The Carrier declined this request, also declining to make any adjustment saying that the position was overpaid. After further investigation, Employees found that the position of Agent at Eagle Grove, Iowa, was the most similar position on the property and amended the claim to a re-

further precluded by the terms of Rule 14(c) of the collective agreement from changing or fixing rates of pay.

As shown by Carrier's Statement of Facts, parties to this dispute have conducted negotiations pursuant to Rules 14(c) and 21, both by correspondence and in conference, in an attempt to agree upon an equitable rate of pay for position of Agent, Sycamore. While the Employees first proposed that the rate at Sycamore be changed to conform with position of Agent, Bellwood, they recognized there is no justification whatsoever for that demand and abandoned same. They subsequently requested a rate to conform with position of Agent, Eagle Grove. However, as explained in Carrier's Statement of Facts, there is a dispute between the parties with respect to the duties and responsibilities comprehended by the rate of pay applicable to position of Agent, Eagle Grove, the Employees contending that incumbent of the latter position is prohibited from handling train orders, communications, etc., notwithstanding the absence of any provision to that effect in the collective agreement. Obviously, there is no justification for request that rate of pay for the Agent, Sycamore, be adjusted to conform to a position on which the parties are in dispute with respect to the duties and responsibilities comprehended by the monthly rate of pay. This fact was recognized in conference March 7, 1957, at which time General Chairman suggested that rate of pay for the Agent, Sycamore, be adjusted to conform to the Agent at DeKalb, Illinois, which is located in the same vicinity as Sycamore and is otherwise quite similar (see letter dated June 4, 1957, reproduced in Carrier's Statement of Facts). Furthermore, there is no dispute between the parties with respect to the duties and responsibilities comprehended by the monthly rate of pay applicable to position of Agent, DeKalb. Carrier indicated a willingness to entertain this proposition, with the understanding, of course, that the duties and responsibilities of position of Agent, Sycamore, would be comparable or similar to the Agent, DeKalb. However, instead of exhausting negotiations pursuant to Rules 14(c) and 21, the Employees elected to submit dispute to the Third Division with a view of circumventing the governing rules. In the past, the parties hereto always have been successful in adjusting rates of pay through the processes of negotiations, as provided by the rules, and this is the first instance on this property the Employees ever have alleged that such issues are properly referable to the National Railroad Adjustment Board. However, in similar disputes on other railroads involving rules similar to this Carrier's Rule 14(c), it has been recognized that the Board "must leave to the parties for negotiation and bargaining, any differences existing over the worth or value of service performed or to be performed" and that "negotiation is the indicated course here. This Board has no inherent authority to fix rates of pay. It must be bound by the agreement as the parties have written it." (Awards 5093 and 6803.)

The collective agreement, as the parties to this dispute have written it, unequivocally provides that "change in classification of positions or rates of pay will be made only by agreement between the management and the General Chairman." (Rule 14-c).

This claim necessarily must be dismissed by the Third Division in order that the management and General Chairman may discharge the obligation imposed by Rule 14(c) and agree upon any change in the rate of pay applicable to position of Agent, Sycamore.

**OPINION OF BOARD:** The relevant facts are not in dispute. Claimant held the position of Agent at Sycamore, Illinois. Prior to August 9, 1956 he was paid on a monthly basis plus commissions on express shipments. On the latter date the Carrier discontinued the handling of express shipments at Sycamore.

more which resulted in the discontinuance of commissions earned by Claimant. The discontinuance of commissions reduced Claimant's monthly compensation by about \$140.48.

Rule 21 of the Agreement provides as follows:

"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."

On October 1, 1956 the Employees' General Chairman wrote to Carrier's Superintendent requesting that Claimant's monthly salary be adjusted to \$442.23 a month because the position at Sycamore was similar to the position at Bellwood, Illinois. Carrier's Superintendent replied on November 20, 1956, in part as follows:

"It appears to be your contention Rule 21 contemplates, when express commissions are discontinued, that the rate of pay of the position affected shall be correspondingly increased to offset the loss in compensation.

"Obviously, if that had been the intent and purpose of the rule, little difficulty would have been experienced in selecting and adopting simple language to express that provision. The fact that such language is not contained in the rule clearly refutes any contention of this nature.

"Neither is there any similarity in the positions at Sycamore and Bellwood other than the fact that they were both monthly rated station agents who derive no compensation from express commissions.

"In my opinion there is no valid basis for claim that his position be compensated at rate of pay of \$442.23 per month effective August 9, 1956, and same is respectfully declined."

On November 23, 1956, Employees revised their claim and asked "that the rate at Sycamore be adjusted effective August 9, 1956, to conform with the rate of Agent, Eagle Grove." To this, Carrier's Superintendent replied on January 2, 1957, "that the existing rate of pay is adequate for service actually derived from the incumbent of this position, particularly in view of your contention that the incumbents of such positions are prohibited from handling train orders, communications of record, etc." Continuing further, Carrier's Superintendent wrote:

"On the other hand, the records indicate that the rates of pay of the Agents at Manning, LeRoy and Spring Valley were increased 2.4¢ per hour when express commissions were discontinued at those stations, and in order to settle this dispute I am agreeable to an equivalent adjustment in the rate of pay of the agent at Sycamore, if that will be satisfactory."

Employees rejected this offer and appealed the claim to Mr. D. K. Lawson, Assistant to the President. Under date of May 29, 1957 Employees wrote to Mr. Lawson, in part, as follows:

"Case was discussed in conference on March 5, 1957, and again on April 4, 1957. At each conference, your desire was to reclassify the position with the rate being no object in particular from what I was given to understand by you in conference. Our claim is simply for adjustment in rate per the terms of Rule 21 of the Agreement. That is the Rule intended in the collective agreement, to be used for adjustment of rates when commissions are discontinued (or created)."

Mr. Lawson replied on June 4, 1957, in part as follows:

"The offer referred to by Mr. Halverson was 2.4¢ per hour, same as the adjustment agreed to on positions of agent at Manning, LeRoy and Spring Valley, when express commissions were discontinued at the latter stations. The offer was rejected by you and the claim was subsequently discussed in conference in this office on March 7, 1957, at which time you suggested the rate of pay of the Agent at Sycamore be adjusted to conform to the Agent at DeKalb, Illinois, which you deemed a position comparable to Sycamore. The undersigned then indicated that he might be agreeable to this latter suggestion if you would concede that Group 2 agents could perform communication work, the same as Group 3 agents, such as DeKalb."

We are not here concerned with the duties which may be assigned to Agents in Group 2, including Sycamore. This dispute concerning duties "has arisen since June 1, 1948, effective date of the current Agreement, and the date that the agency at Sycamore was included in the Agreement" (page 18 of the record). We are only concerned with the requirements of Rule 21.

Carrier's offer to increase the rate at Sycamore by 2.4¢ an hour comparable to adjustments made at Manning, LeRoy and Spring Valley is not proper and adequate under Rule 21. Sycamore is covered in Group 2 of Addendum No. 2. Certain Rules of the Agreement are not applicable to the Agent's position at Sycamore. Positions at Manning, LeRoy and Sycamore are not contained in Addendum No. 2. Further, Carrier never contended that the position at Sycamore was similar to the positions at Manning, LeRoy and Spring Valley. Carrier merely said:

"... the records indicate that the rate of pay of the Agents at Manning, LeRoy and Spring Valley were increased 2.4¢ per hour when express commissions were discontinued at those stations . . ."

This establishes no similarity required by Rule 21.

Rule 21 requires that "prompt adjustment of the salary affected shall be made conforming to rates paid for similar positions". The Carrier made no effort to conclude a "prompt adjustment" after August 9, 1956, nor did the Carrier propose adjustments based on "rates paid for similar positions." The Employees did offer two positions which they contend were "similar". When Carrier rejected the Bellwood position as not similar, Employees proposed an adjustment based on the salary of the Agent's position at Eagle Grove. (Emphasis ours.)

This Board has the responsibility to determine from the record whether "similar positions" were proposed. We have no right to adjudicate rates of pay as such, but we do have the right and the obligation to determine whether there are "rates paid for similar positions" which may be applied to adjust the Agent's rate at Sycamore.

We have remanded other claims because there was not sufficient evidence in the record to determine whether positions proposed by the parties were similar. In Award 10620 (LaBelle) we remanded the claim for further negotiations because there was not "sufficient information upon which we could base a rate which would be fair to the parties." We held that it was not sufficient "to set rates solely on the basis of gross revenue." It is erroneous to emphasize "rates" even though the eventual decision concerns rates of pay. It is, rather, necessary to ascertain whether there are similar positions to determine the adjusted rate.

Award 7592 (Larkin) did not involve a Rule similar to Rule 21 in the Agreement before us. We said in that Award:

"The record indicates that the parties have not seriously attempted to negotiate a properly adjusted rate for the Claimant. And the record is without any data upon which we could act if we were so inclined. We cannot, under the language of the parties' Agreement of 1951, order any specific rate."

This Award is also not applicable. We are not here called upon to set a rate. We are only obliged to determine whether a similar position exists upon which a salary adjustment can be made.

Also in Award 6785 (Donaldson) we remanded the claim for further negotiations because it is not proper to "set rates solely upon the basis of gross revenue." The Rule in that claim was quite different from Rule 21 here under consideration. That Rule read:

"Should commissions be discontinued causing loss in compensation, adjustment of salaries affected will be made."

There is evidence in the record that the Employees submitted evidence showing similarity between the Agent position at Sycamore and at Eagle Grove. This similarity is based upon the fact that (1) both positions are monthly rated, (2) both are in Group 2 of Addendum No. 2, and (3) the comparison is made on population, freight bills issued, car loads handled, car load tonnage, cars interchanged and gross revenue. All this comparable data is for 2 years and 7 months immediately preceding August 9, 1956.

Not until its reply to Employees' Ex Parte Submission, does Carrier submit evidence on similarity of positions and then only to negate Employees' evidence. Carrier makes comparisons between Sycamore, Eagle Grove and Mankato on the same kind of criteria used by Employees to show similarity of positions between Sycamore and Eagle Grove alone. And even then Carrier does not affirmatively offer the evidence to show that the position at Sycamore is more similar to Mankato than to Eagle Grove. It says only that: "On the basis of the above reasoning it is apparent that the proper rate at Sycamore should be somewhere in between Sycamore and Mankato." At that point the Carrier abandoned its previous position that the rate at Sycamore should be increased 2.4¢ per hour because a similar adjustment was made at Manning, LeRoy and Spring Valley. It should be noted that Carrier made no comparison on the property between the positions at Sycamore, Eagle Grove and Mankato.

It is not our obligation or purpose to determine whether the monthly rate at Eagle Grove was equitable or excessive. In Award 5565 (Elson), which involved a Rule similar to Rule 21, we said:

"The Board cannot inquire into the issue whether the rates being paid the agents at the several stations used for purposes of comparison are either sub-standard or excessive."

\* \* \*

"Our examination is primarily concerned with the responsibilities and duties of the positions and in forming our judgment we can only approximate positions of similar importance."

In Award 5056 (Kelliher) we sustained a claim based on a like Rule. There, like here, Carrier did not produce evidence of similar positions. We said:

"The Organization asserts that the job at Belleville is a 'similar' position. The Carrier denies that Belleville is 'similar'. It is the Carrier's statement that although there 'are other stations on Carrier's property which are somewhat similar to the station at Goodland', the Carrier does not believe it necessary to discuss them because of the Organization's claim with reference to Belleville. The Carrier contends that the Organization has the burden of proving Belleville to be a 'similar' position."

\* \* \*

"It must be agreed that on two stations on the line are identical. The facts in this case do not permit a precise measurement of all elements in the contents of the two positions. In expressing the purpose that an 'adjustment of the salaries affected' would be made, the parties did not contemplate the necessity of a fine degree of exactness. The comparison must be made between existing positions as they are found on the Carrier's lines. The only evidence in the record with reference to 'similar' positions is that the job at Goodland is 'similar' to the positions at Belleville."

We agree that the Employes have the burden of proving that the position at Eagle Grove is "similar" to the position at Sycamore. And this the Employes have done by a preponderance of evidence in the record. The comparison between the two positions as offered by the Employes is as fair and as reasonable as we can expect. Rule 21 does not contemplate any greater degree of exactness. Carrier presented no affirmative evidence to show that the position at Sycamore was more 'similar' to a like position in another station.

**FINDINGS:** The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes 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 Carrier violated the Agreement.

AWARD

Claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 27th day of May 1963.