

Award No. 12072
Docket No. TE-10699

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

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 when it failed and refuses to adjust salaries affected by discontinuance of express commissions.
2. Carrier shall be required to adjust the salaries of employes occupying the following positions in the amount set forth after the name of the position; the adjustment to be effective on December 14, 1956:

Agent-Telegrapher, Aurora, Iowa, 4 cents per hour
Agent-Telegrapher, Lamon, Iowa, 10 cents per hour
Agent-Telegrapher, Dyersville, Iowa, 15 cents per hour
Agent-Telegrapher, North Hanover, Illinois, 10 cents per hour
Agent-Telegrapher, Elizabeth, Illinois, 18 cents per hour
Agent-Telegrapher, Stockton, Illinois, 27 cents per hour
Agent-Telegrapher, Pearl City, Illinois, 17 cents per hour
Agent-Telegrapher, German Valley, Illinois, 6 cents per hour
Agent-Telegrapher, Byron, Illinois, 30 cents per hour
Agent-Telegrapher, Lindenwood, Illinois, 5 cents per hour
Agent-Telegrapher, Esmond, Illinois, 4 cents per hour
Agent-Telegrapher, Clare, Illinois, 4 cents per hour
Agent-Telegrapher, Virgil, Illinois, 5 cents per hour
Agent-Telegrapher, Wasco, Illinois, 6 cents per hour
Agent-Telegrapher, Villa Park, Illinois, 60 cents per hour

EMPLOYES' STATEMENT OF FACTS: The agreements between the parties are available to your Board and by this reference are made a part hereof.

probative evidence of the fact that business has decreased to such a degree that agency service has been discontinued; yet, the Employees are requesting this Division to grant former occupants of these positions increases amounting to \$137.46 per month. This same general situation obtains at the remaining eleven small agency stations where the duties and responsibilities of the agent have decreased materially by reason of the continued decline in business during the past ten years.

In addition to the foregoing, it is anticipated that in the near future order will be received from the Iowa Commerce Commission authorizing the discontinuance of agency service at Lamont, Iowa, at which station the Employees have requested an increase of 10 cents per hour in the agent's rate of pay.

In the past, the parties have been successful in adjusting rates of pay through the processes of negotiation; however, in this instance, the Employees, as previously indicated herein, have been unrealistic and exorbitant in their demands, and in lieu of exhausting negotiations pursuant to Rules 14 (c) and 21, have elected to submit dispute to the Third Division with a view of circumventing governing rules. 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 "changes in classification of positions or rates of pay will be made only by agreement between the management and the General Chairman." [Rule 14 (c)]

Without prejudice to the Carrier's primary position that claim is barred under terms of Article V of the August 21, 1954 Agreement, it is the Carrier's further position that claim must necessarily 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 a rate of pay covering the remaining positions involved in this dispute.

Carrier affirms that all data in support of its position has been presented to the other party and made a part of the particular question in dispute.

OPINION OF BOARD: Express commissions for Agents at the stations noted in the claim were discontinued on or about August 9, 1956. Petitioner invoked the provisions of Rule 21. The claim was first presented on February 12, 1957. Carrier contends that the claim should be dismissed because the claim was not presented within the time limits prescribed in Rule 23 (a). Petitioner contends that this is a continuing claim within the provisions of Rule 23 (d). We have discussed this subject at great length in Award 12071. The facts in that dispute are in every way similar to the issue here. We held there and affirm here that this is a continuing claim and may properly be considered by this Board.

Carrier also contends that the claim should be dismissed because the Claimants are not named. The claim is on behalf of employees occupying Agent-Telegrapher positions in each of the locations therein named. They are described, readily identifiable and easily ascertained. The claim is valid.

Petitioner filed the claim for specific amounts of hourly wage increases for each of the positions. At no time, on the property, did Petitioner present evidence comparing the compensation for the claimed positions with rates paid for similar positions as required in Rule 21. Petitioner first presented such evidence in the Ex Parte Submission. This we may not now consider. Negotiations on comparability of rates as required in Rule 21 should have been done on the property. It cannot be considered after the claim is filed with the Board.

We held in Award 11440 that the burden of proving the similarity of positions is upon Petitioner. This, Petitioner has failed to do on the property. On the basis of the record, Petitioner failed to negotiate for an adjustment in rates within the requirements of Rule 21.

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 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 Carrier did not violate the Agreement.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of January 1964.