

Award No. 14095
Docket No. TE-14763

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David Dolnick, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly The Order of Railroad Telegraphers)

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Pennsylvania Railroad, that:

With the removal of the Railway Express business at Jamesburg, New Jersey, effective March 21, 1962, and with resulting loss in earnings, the rate of pay of the agent at Jamesburg, New Jersey, be adjusted to compensate the agent of such loss, effective from the date removed. Regulation 8-A-1(b) governs.

EMPLOYEES' STATEMENT OF FACTS: Jamesburg, New Jersey, is located on Carrier's Amboy Branch, some 40 miles south of New York City. It is also a terminal point on the Jamesburg Branch and the Freehold Branch, both of which intersect the Amboy Branch at Jamesburg.

Prior to March 21, 1962, the Agent at Jamesburg was a joint agent for the Pennsylvania Railroad and the Railway Express Agency, Inc. The Agent was required by the Carrier under its arrangement with the Railway Express Agency to also serve as agent for the Agency. For such service in handling express traffic he was compensated on a commission basis. Such express commissions are and have been for many years taken into consideration in fixing rates of pay for Agents' positions.

When the express business was removed from Jamesburg on and after March 21, 1962, the Carrier made no move to adjust the Agent's rate of pay. The express commissions were substantial and represented a serious loss in income to the Agent. The District Chairman lodged a claim for an adjustment in the rate of pay and the correspondence relating thereto follows below:

"13 Hoover Drive
Brick Town, New Jersey
March 22, 1962

Mr. L. C. Neff
Supt.-Frt. Station, PRR
Room 412
Pennsylvania Station, N. Y.

The Railway Labor Act, in Section 3, First, subsection (i), confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules and working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties to it. To grant the claim of the Employees in this case would require the Board to disregard the Agreement between the parties thereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take such action.

CONCLUSION

Carrier has established that the rate adjustment sought by the Employees can only be accomplished through negotiations by the parties; that the only circumstances requiring the Carrier to enter into negotiations concerning adjustments in the rates of pay of positions covered by the Telegraphers' Agreement are those specifically set forth in Regulation 8-A-1; that such circumstances are not present in the instant case; and that, therefore, no proper basis exists for an award requiring the Carrier to enter into negotiations with a view to considering an adjustment in the rate of pay of the Agent at Jamesburg.

Therefore, your Board is respectfully requested to deny or dismiss the claim of the Employees in this matter.

(Exhibits not reproduced.)

OPINION OF BOARD: The essential facts are not in dispute. Claimant held an Agent position at Jamesburg, New Jersey; he received a monthly salary from the Carrier. In addition thereto, he was paid a commission by the Railway Express Agency. The Express Agency was removed. He no longer receives a commission and his total monthly earnings have declined.

There is no rule in the Agreement which requires Carrier to negotiate rates of pay when an employee's earnings are reduced because of loss of commissions from the Railway Express Agency.

Employees contend that Claimant's rate of pay "when negotiated was predicated on the fact that the Agent handled a considerable amount of commissions each month." In support of this position, the Employees have cited instances where the Carrier made wage rate adjustments for Agent positions at other locations when express commissions were lost.

Carrier agrees that adjustments have been made, and in a letter to the General Chairman, dated August 9, 1962, said, in part:

"Full consideration has been given to each of the points advanced by you, all of which tend to take the position that there have been instances and situations in the past where increases in monthly rates of pay applicable to Agents have been granted solely because of the disappearance of express commissions.

A search of our files indicates that in such instances, particularly in the cases cited by you, that while the initial claim or re-

quest in each such case was presented on the basis of disappearance of express commissions, the final disposition of each case, if an increase was granted, was based upon a substantial change in the duties or responsibilities of the Agent's position sufficient to warrant an increase in rate of pay, under 8-A-1(b)."

But the Employees presented eleven agencies where wage rates were adjusted because of loss of commissions and only one location where wages were adjusted because of loss of commission and increase of industries. These adjustments ranged from \$5.00 to \$64.45 per month. And the Carrier has not categorically denied this. It says only that the adjustments were made because of a substantial change in the duties and responsibilities of the positions. Nowhere in the record does Carrier show the extent or nature of such substantial changes.

Regulation 8-A-1(b) reads:

"(b) When the number of days or number of hours constituting the monthly tour of duty of a Group 1 position are substantially changed or the duties or responsibilities of a Group 1 position are substantially changed, adjustment in the monthly rate of pay for such position shall be a subject for negotiation between the proper officer of the Company and the duly accredited representative of the employees." (Emphasis ours.)

Under this rule the Carrier is obligated to negotiate when there is a substantial change in the number of hours in the employe's position. It is reasonable to assume that this generally means an increase in the number of hours constituting the tour of duty. But, the language alone is not that clear. Certainly, the elimination of the express business at the agency permitted the Claimant to spend more hours on Carrier's business. It is also reasonable to assume that the Carrier has given this construction to Regulation 8-A-1(b) when it increased the monthly rates at the eleven agencies where there was a loss of commission without any proof that the duties and responsibilities of the Agents had also increased. This is particularly true because Carrier nowhere denies that the rate of pay for the Claimant was negotiated with the fact in mind that he would also be earning express commissions. It follows, therefore, that some of his hours of work during his tour of duty would be devoted to the Railway Express Agency.

We have no right to determine whether an adjustment of \$15.00 a month, at one time offered by the Carrier, or any other amount is a reasonable and fair adjustment in the rate. We have no authority to fix wage rates. That is a matter for negotiation between the parties.

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 is obliged to negotiate a wage adjustment for Claimant's position.

AWARD

Claim is remanded to the parties, and they are directed to negotiate a wage adjustment in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of January 1966.

CARRIER MEMBERS' DISSENT TO AWARD 14095, DOCKET TE-14763 (Referee Dolnick)

Inasmuch as the Majority found that:

"There is no rule in the Agreement which requires Carrier to negotiate rates of pay when an employee's earnings are reduced because of loss of commissions from the Railway Express Agency."

the claim should have been denied.

In addition, the facts clearly show there was a gradual reduction in the duties and responsibilities of the Agent at Jamesburg with the elimination of Less-Than-Carload Freight handling at that point. Award 8850. Thus, the assumption the Majority makes that

" * * * the elimination of the express business at the agency permitted the Claimant to spend more hours on Carrier's business. * * * " is fanciful reasoning not based upon evidence in the record. In Award 11116 (Sheridan), this Board held:

" * * * we cannot make a decision which relies on conjecture or speculation."

For the reasons set forth above, among others, we dissent.

W. F. Euker
R. A. DeRossett
C. H. Manoogian
G. L. Naylor
W. M. Roberts