



Award No. 17221

Docket No. TE-16460

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

James Robert Jones, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
RAILWAY EXPRESS AGENCY, INC.**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the REA Express, that:

1. REA Express unilaterally and improperly diverted express shipments destined and billed to Winter Park, Florida, October 30, 1964 through November 19, 1964, a station on the Atlantic Coast Line Railroad Company, to Orlando express agency, permitting employees not covered by the Agreement between the parties to handle such shipments.
2. L. A. Lapinski, joint railway express agent at Winter Park, Florida, shall be paid the express commission earnings to which he was contractually entitled on all shipments destined Winter Park, Florida during the above stated period which were improperly diverted from his station.
3. A joint check of records be made to determine the amount of commission due on express receipts No. 482278 and No. 71-97-10.

EMPLOYEES' STATEMENT OF FACTS: Copy of the Agreement between the parties effective August 1, 1945, is available to your Board and by this reference is made a part of this submission.

Claimant is employed by the Atlantic Coast Line Railroad Company as supervisory agent at Winter Park, Florida. As such, he also serves REA Express, Respondent herein. Thus he is a "joint railway-express agent" within the scope (Article I) of the Agreement just placed in evidence. From the date of that Agreement, the position has handled and received compensation for all express shipments to and from Winter Park, including nearby commercial areas. Among the latter are Winter Park Mall, Lee Plaza and Hollieanna Groves.

At Orlando, Florida, the Carrier maintains an agency operated by its exclusive employees.

By unilateral action, effective March 24, 1964, the Carrier began to divert certain shipments which were destined to, or originated at, Winter Park, Florida, through its Orlando Agency. These were shipments which

OPINION OF BOARD: Claimant, an employee of Atlantic Coast Line Railroad as supervisory agent at Winter Park, Florida, also serves REA Express as "joint-railway express agent." REA Express, respondent here, maintains an exclusive agency at Orlando, Florida. Respondent extended the pickup and delivery limits of the Orlando agency to include certain stores and shopping centers previously handled by Claimant at Winter Park. Claimant contends his compensation was thus reduced and asks this Board for relief.

Claimant relies on Articles I, II, III, IV, and VIII of the Agreement to substantiate his claim.

Respondent makes three contentions in defense: 1) The Claimant is not and was not an employee of Railway Express Agency and this Board thus lacks jurisdiction to decide the dispute; 2) Even if the Board decided it had jurisdiction, the claim should be dismissed because of Claimant's unreasonable delay in progressing the claim to the Board; and, 3) Even if the claim is considered on its merits, it must be denied because no Rule of the Agreement has been violated by Respondent.

The first two contentions—lack of jurisdiction and unreasonable delay—must be dismissed as being without merit in this case.

Therefore, we will concentrate on which, if any, rules of the Agreement were violated by Respondent.

Of the rules cited by Claimant, we feel that Article I, II, and IV are not in contention in this case.

Does Article III or Article VIII impose a condition precedent on the Respondent to notify of the proposed changes in pickup and delivery of shipments at Winter Park and to confer on these changes before such changes can be made?

Article III states in full:

**"ARTICLE III
TRANSFER OF EXPRESS**

At any point where express matter is transferred by the joint agent to and/or from trains or other transportation lines, reasonable agreed upon compensation will be paid for this service.

At points where such compensation is paid (except those subject to adjustment), such compensation will be continued, unless and until a change is made in the routing or volume of traffic handled, or other change in conditions justifies an adjustment in compensation, in which event conference shall be held between the parties hereto, or their designated representatives, to agree upon proper compensation for such service, and until such an agreement is made compensation in effect shall be continued; provided, that if no agreement is reached within thirty (30) days after notice of intent or desire to change is served by either party hereto upon the other than thereafter handled in the usual manner up to and including the General Manager. The thirty day period may be extended by mutual agreement."

We agree with Respondent that Article III concerns transfer of express and not the pickup and delivery of shipments for which a commission is paid. The latter is the question of dispute in this case. Thus, claim cannot be sustained based on Article III.

Article VIII states in full:

"JOINT AGENCIES

Joint railway-express agencies shall not be established, separated or discontinued without reasonable notice to and conference between the parties hereto or their designated representatives, when full information shall be given as to the occasion for changing existing conditions at the agency or agencies involved."

Since the actions of Respondent in changing certain handling of shipments did not constitute the establishment, separation or discontinuance of a joint railway-express agency, we feel Article VIII does not support this claim.

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 Employess involved in this dispute are respectively Carrier and Employee 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 Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 18th day of June 1969.