



Award Number 17342

Docket Number TE-16415

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert C. McCandless, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
MISSOURI PACIFIC RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Missouri Pacific Railroad (Gulf District), that:

1. Carrier violated the Agreement between the parties when, on the 12th day of March, 1965, after discontinuance of passenger trains 50 and 51 at DeQuincy, Louisiana, it discontinued the Railway Express Agency commission, transferring the same to the Kansas City Southern Railroad agency without adjusting the agent's salary in accordance with Rule 29(a) of the Agreement.
2. Carrier shall increase the Agent-Telegrapher's salary at DeQuincy, Louisiana, the equivalent to the express commission annually handled at this station, i.e., approximately \$500.00 per year.
3. Carrier shall compensate the Agent-Telegrapher at DeQuincy, Louisiana, six percent interest on all sums due and withheld as a result of this action.

EMPLOYEES' STATEMENT OF FACTS: The agent-telegrapher position at DeQuincy, Louisiana had been assigned for years the duty of handling the Railway Express and the rate of pay for the position was fixed in conformity with the fact that the Railway Express through commissions paid part of the agent's salary for the total operation of the agency. On March 12, 1965 the Missouri Pacific Railroad acting alone removed the express commissions from the agent-telegrapher's position and transferred the express work to the agent-telegrapher of the Kansas City Southern Railway in the same city across the town of the Missouri Pacific station. The handling of this express had been a function of the agent's position since the inception of this railroad, more than sixty years before. The railroad did not at any time contact the Organization toward the disposition of this matter but acted unilaterally. When the express commissions were discontinued at the agent-telegrapher's position at DeQuincy, Louisiana, reducing the average monthly compensation, the Employees filed claim for an increase in the agent-telegrapher's salary to the equivalent of the express commissions annually handled at this station, which are approximately \$500.00 per year. The claim was handled thru the highest officer and declined by him. The claim is not properly before your Board for adjudication.

(Exhibits not reproduced)

a position of this type and meets the requirements of Rule 29 (a) as the rate does conform to rates paid for similar positions.

In view of the foregoing, claim is without merit or rule support and is hereby declined.

Yours truly,

/s/ B. W. Smith"

OPINION OF BOARD: Effective March 10, 1965, Carrier discontinued operations of two passenger trains between Houston and New Orleans. Due to this discontinuance, the Railway Express Agency discontinued using Carrier's DeQuincy, Louisiana, facility for express traffic. The Agent-Telegrapher, the instant Claimant, lost the commissions he had been used to receiving for handling this traffic heretofore.

Employees, in Claimant's behalf, request that:

"Carrier shall increase the Agent-Telegrapher's salary at DeQuincy, Louisiana, the equivalent to the Express Commission annually handled at this station, i.e., approximately \$500.00 per year."

The provision of the Agreement relied upon by Employees is set forth below:

"RULE 29 (a):

When express or commercial telegraph commissions are discontinued at any office, thereby reducing the average monthly compensation paid to any position, prompt adjustment of the salary affected will be made conforming to rates paid for similar positions."

After a thorough examination of the Agreement, the Transcript, and the awards cited by both parties, this Board must deny this claim for the following reasons:

1) The Employees' claim is based on a request to make up the difference in lost commissions by a salary increase. The Agreement, however, calls for a "prompt adjustment" in consonance with the rate of pay for "similar positions." This Board finds that Employees did not meet their burden of proof by showing that other agent-telegraphers were making approximately \$500.00 more per year. Nor did Employees show that Carrier acted in an arbitrary or capricious manner by looking at the particular agent-telegrapher positions to which they looked to ascertain that the rate of pay at DeQuincy, even without express commissions, was not out of line.

2) This Board has previously stated, and herein reaffirms, that we can not involve ourselves in rate making or wage setting, absent a capricious or arbitrary violation of the Agreement. (Awards 2682, 5093, 6803, 7922, and 8201.

3) Rule 29 (a) does not provide for the computation of salary adjustment on the basis of express commissions lost, as requested in Employees' statement of claim. In so holding, we follow Awards 6785 and 7592.

For the above reasons, this Board must deny 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 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 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 30th day of July 1969.