



Award Number 17686

Docket Number TE-17174

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David L. Kabaker, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
UNION PACIFIC RAILROAD—EASTERN DISTRICT**

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

CLAIM NO. 1

1. Carrier failed to comply with Rule 18 of the Agreement between the parties when express and cream commissions were discontinued at Ovid, Colorado.
2. Carrier shall be required to increase the rates of pay at Ovid, Colorado by \$.05 per hour.

CLAIM NO. 2

1. Carrier failed to comply with Rule 18 of the Agreement between the parties when express commission was discontinued at Ord, Nebraska.
2. Carrier shall be required to increase the rates of pay at Ord, Nebraska by \$.4735 per hour.

CLAIM NO. 3

1. Carrier failed to comply with Rule 18 of the Agreement between the parties when express commission was discontinued at Papillion, Nebraska.
2. Carrier shall be required to increase the rates of pay at Papillion, Nebraska by \$.1657 per hour.

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties effective November 1, 1962, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

Rule 18 of the current Agreement between the parties reads as follows:

"RULE 18—COMMISSIONS

- (a) When commissions accruing to any position are materially reduced, or entirely removed, and it has been recognized that the commissions received operated to influence the rate downward, prompt adjustment in rate shall be made.

The handling on the property of the dispute involving the Agent-Telegrapher's rate of pay at Ord, Nebraska is set forth in the following letters between representatives of the Organization and representatives of the Carrier:

Carrier's Exhibit F—Letter dated August 16, 1966 from General Chairman Goldsmith to Assistant to Vice President DeLong attaching District Chairman McMillan's presentation of claim dated July 29, 1966.

Carrier's Exhibit G—Assistant to Vice President DeLong's letter dated October 11, 1966 to General Chairman, detailing the business handled at Ord, denying the claim.

Carrier's Exhibit H—Letter dated November 22, 1966 from Assistant to Vice President DeLong to General Chairman Goldsmith, reaffirming the denial following conference discussion of the claim.

The handling on this property of the dispute involving the Agent-Telegrapher's rate of pay at Papillion, Nebraska is set forth in the following letters between representatives of the Organization and the Carrier:

Carrier's Exhibit I—Letter dated August 27, 1966 from General Chairman Goldsmith to Carrier's Assistant to Vice President DeLong attaching District Chairman McMillan's presentation of claim.

Carrier's Exhibit J—Assistant to Vice President DeLong's letter dated October 11, 1966 to General Chairman Goldsmith, pointing out the comparison of business handled at Papillion with that handled at Silver Creek.

Carrier's Exhibit K—Letter dated November 22, 1966 from Assistant to Vice President DeLong to General Chairman Goldsmith, reaffirming denial of the claim following conference discussion.

(Exhibits Not Reproduced)

OPINION OF BOARD: On October 15, 1965, Carrier discontinued operation of its motor freight line through Ovid, Colorado, resulting in the elimination of the handling of cream and express at that point. On May 3, 1966, Railway Express Agency removed handling of express at Carrier's station, Ord, Nebraska, and transferred the handling of such express shipments to Chicago, Burlington and Quincy Railroad Station, Ord, Nebraska. This transfer was allegedly brought about because of this Carrier's discontinuance of motor freight service to Ord. On April 29, 1966, Carrier discontinued motor freight operation to Papillion, Nebraska, resulting in discontinuance of the handling of express at that point.

In each instance, the agent-telegrapher was paid a commission, in addition to his regular railroad wages for the handling of such express shipments, and at Ovid, cream shipments. Loss of these commissions resulted in substantial reduction of compensation for the occupants of the positions. The Organization requested an upward adjustment in basic hourly wage rate for each position. Reliance was placed on Rule 18, which provides:

"Commissions. (a) When commissions accruing to any position are materially reduced, or entirely removed, and it has been recognized that the commissions received operated to influence the rate downward, prompt adjustment in rate shall be made.

(b) Agents (except as listed in Rule 2) handling milk or cream shipments by baggage will be allowed ten per cent commission on all such shipments, except at stations where this commission has been converted into the wage rate of the position."

Rule 18 (a) is clear and unambiguous in its requirement that "it has been recognized that the commissions received operated to influence the rate downward." This rule is different from rules in other agreements wherein the right to wage adjustment is bottomed upon comparison with similar positions. The Organization contended, during handling on the property, that wage adjustments made many years ago proved that wage rates of the points involved were influenced downward because of receipt of commissions. Carrier contended that such rates did not prove the point.

We agree that the rule requires proof to show that the agreed-to wage rates were lower because the occupant of the positions received such commissions. The record has been examined carefully and we do not find such evidence. The mere fact that wage adjustments were made, from time to time, and that rate of a position was increased and rate of another position was not increased would not, standing alone, constitute probative evidence that commissions were the responsible factors.

It is axiomatic that the burden is upon the petitioner to support its claims with sufficient probative evidence; having failed to do so, we have no alternative but to deny the claims for lack of proof.

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

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD

By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of January 1970.