



Award No. 18660
Docket No. TE-18951

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert A. Franden, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION DIVISION, BRAC
REA EXPRESS, INC.

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation Division, BRAC, representing joint agent employees of the Chesapeake and Ohio Railroad and Railway Express Agency, Inc., T-C-5754, that:

1. Railway Express Agency, Inc., violated the terms of the Agreement between the parties when, effective June 1, 1969, it arbitrarily and unilaterally discontinued the fixed allowance of \$375.00 per month paid the agent at Ronceverte, West Virginia.

2. Railway Express Agency, Inc., shall, because of the violation set out in Item 1 hereof, restore the fixed allowance of \$375.00 per month paid the Agent for all services at Ronceverte, West Virginia; and compensate Agent E. R. Loudermilk, or his successor, for the difference between the commission rate paid and the fixed allowance rate for each month, commencing with the month of June, 1969, and continuing thereafter until such time as mutually agreed to method of disposing of the issue in this controversy is reached by the parties to this dispute. A check of express records shall be made for the purpose of determining the amount of compensation due.

3. In addition to compensating Claimant for wages which he lost as a result of Carrier's action, he shall also be paid an additional six (6) per cent in interest, compounded annually on the anniversary date of this claim.

EMPLOYEES' STATEMENT OF FACTS:

(a) STATEMENT OF THE CASE

The Agreement between the parties, effective September 1, 1916, originally entered into by the Adams Express Company of which REA Express became successor, and The Order of Railroad Telegraphers, now the Transportation-Communication Division, Brotherhood of Railway and Airline Clerks, is on file with your Board and by this reference is made a part hereof.

The Agreement concerns rules, commission rates, and transfer allowances and salaries for agents of REA Express who are employees of the Chesapeake and Ohio Railway in joint agency service. The Chesapeake and Ohio Railway

ceverte of paying the agent a fixed allowance. From November 1, 1955 to May 31, 1969 the agent at Ronceverte, while principally engaged in performing services for the C&O, received a fixed allowance of \$375 a month for handling express business, which included performing pickup and delivery service. REA also paid for the rent and telephone service, and continues to do so.

E. R. Loudermilk was the agent at Ronceverte from 1963 through 1969. He paid \$317.50 a month to C. Longacre, the merchant agent at Lewisburg, West Virginia, to handle the express business at Ronceverte and keep the office open. He made this arrangement on his own, and as a result received a net amount of \$57.50 a month without doing any work for it.

On June 1, 1969, REA discontinued the \$375 a month fixed allowance and reverted to the method of payment provided for in the 1916 Agreement. Prior thereto, on April 23, 1969, Vice President J. N. Meisten wrote to General Chairman Wright advising him of the proposed change and the reasons for the change (REA Exhibit No. 2). On April 28, 1969, General Chairman Wright communicated his objections to Vice President Meisten (REA Exhibit No. 3). On April 30, 1969, claimant Loudermilk was notified of the proposed change (REA Exhibit No. 4). On June 3, 1969, Vice President Meisten responded to General Chairman Wright's objections (REA Exhibit No. 5). On June 6, 1969, General Chairman Wright renewed his objections, and on July 3, 1969 submitted a claim for reparations to Division Manager Graef (REA Exhibits No. 6 and No. 7). Division Manager Graef denied the claim on August 7, 1969 and stated his reasons for doing so (REA Exhibit No. 8). General Chairman Wright objected to Division Manager Graef's denial of the claim and appealed to Vice President Masse on August 15, 1969 (REA Exhibits No. 9 and No. 10). On September 5, 1969, Vice President Masse sustained Division Manager Graef's decision to deny the claim (REA Exhibit No. 11). A conference was held on October 30, 1969 to try to resolve this dispute, but to no avail.

During January, 1970, P. S. Bowden was the agent at Ronceverte, On February 1, 1970, R. T. Bowden became the agent at Ronceverte. However, as Forms 7050 indicate, both P. S. Bowden and R. T. Bowden continued to have someone else do the Ronceverte express work (REA Exhibit No. 12). REA Exhibit No. 13 shows the amount of commission payments from June through December, 1969.

(Exhibits not reproduced.)

OPINION OF BOARD: On June 1, 1969 Railway Express Agency, Inc., unilaterally discontinued a fixed allowance method of paying the Agent at Ronceverte, West Virginia and commenced application of a commission basis of payment based on a 1916 Agreement. The 1916 Agreement provided that said agreement was to remain in effect subject to 30 days notice being given by either party.

It is clear from the record that the Agreement between the parties had been amended at some later time to provide for the fixed method of payment for the agent at Ronceverte.

The question this Board must decide is whether the subsequent Agreement between the parties relative to the pay of the Agent at Ronceverte reaches the status of a duly negotiated wage agreement. We think it does. For REA to give cancellation notice under the 1916 Agreement and the unilaterally reduce the pay of the Agent at Ronceverte is a violation of the agreement between the parties.

The assertion that this Board has no jurisdiction over the matter because the claimant performs no work for REA is totally without merit. The question of the maintenance of the Status quo under Section 6 of the Railway Labor Act is not a proper question for consideration by this Board.

We will sustain parts 1 and 2 of the claim but deny part 3.

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 Employes involved in this dispute are respectively Carrier and Employes 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 has been violated.

AWARD

Claim allowed as to parts 1 and 2 and denied as to part 3.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 29th day of July 1971.