

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

Wm. H. Spencer, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY**

DISPUTE.—"Claim of The Order of Railroad Telegraphers that the normal commission rate of 3%, with a maximum of \$10.00 per car on express shipments paid railroad agents by Railway Express Agency, Inc., that was arbitrarily reduced to \$5.00 per car flat rate as of May 19, 1930, with the concurrence of the Railroad Management, be restored and agents retroactively reimbursed for the difference."

FINDINGS.—The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds 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.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

The dispute being deadlocked, Wm. H. Spencer was called in as Referee to sit with this Division as a member thereof.

JOINT STATEMENT OF FACTS.—In accordance with a statement of facts jointly certified by the parties, the Third Division of the Adjustment Board further finds:

"Prior to May 19, 1930, all agents for the St. Louis-San Francisco Railway Company, St. Louis, San Francisco and Texas Railway Company, and Fort Worth and Rio Grande Railway Company, required by the carrier to handle business for the Railway Express Agency, Inc., were paid a commission of 3%, with a maximum of \$10.00 per car on all carload shipments of express handled at their stations. Under date of May 10, 1930, file 1503-134, the Frisco Management notified the General Chairman of the Order of Railroad Telegraphers that it had arranged with the express company to reduce the carload commission rate to \$5.00 per car flat effective May 19, 1930. The General Chairman immediately filed protest against such action asking that the rate of commission of 3%, with a maximum of \$10.00 per car be restored retroactive to May 19, 1930."

POSITION OF EMPLOYEES.—The petitioner contends that the employees involved herein, although nominally the employees of the Railway Express Agency, are, as to railway express business, actually employees of the respondent carrier; that the commissions paid employees for transacting railway express business is a part of their basic compensation; that the respondent carrier either took the initiative in reducing these commissions or concurred with the Express Agency in making the reductions; and that the reductions were in violation of Article XVI (2) of the Agreement between the parties. Article XVI provides:

"Should either of the parties to this Agreement desire to revise or modify the rules or rates of pay, thirty (30) days' written advance notice (containing the proposed changes) shall be given and conferences shall be held immediately on the expiration of said notice, unless another date is mutually agreed upon."

POSITION OF CARRIER.—In support of its position that the claim is not well founded, the carrier contends:

(1) That the Third Division of the Adjustment Board should not consider the dispute "for the reason that after the General Chairman, ORT, had handled the case considerably with the General Manager and request had been last

declined in letter August 11, 1930, his appeal was not taken to the Vice President or Chief Operating Officer, who is the highest officer of the Railway designated to handle complaints or grievances under the Telegraphers' Schedule, until letter from General Chairman Fullington to Mr. H. L. Worman, Chief Operating Officer, dated July 28, 1934."

(2) That "the National Railroad Adjustment Board does not have jurisdiction for the reason the complaint is about payment made to agents by the Railway Express Agency and not by the Railway Company."

(3) That "there is no rule in our Agreement with the Order of Railroad Telegraphers supporting position of employees."

(4) That there is no merit in the claim.

CONCLUSION OF THE DIVISION.—Upon the record and the evidence, the Third Division of the Adjustment Board arrives at these conclusions:

(1) This dispute was "pending and unadjusted on the date of the approval" of the Railway Labor Act of June 21, 1934, and was handled in accord with the provisions of the Act before it was submitted to the Third Division of the Adjustment Board.

It must, of course, be admitted that considerable time elapsed between the origin of this dispute and its submission to the Adjustment Board. An examination of the record indicates, however, that the Order of Railroad Telegraphers is no more chargeable with this delay than the carrier is. If a scapegoat must be found for the delay, it is probably to be found in the fact that the Railway Labor Act of 1926, while calling for the establishment of adjustment boards, left open the question whether such boards should be on a system, regional, or national basis.

The System Board of Adjustment was not finally established on the Frisco Railway until early in 1934. Upon its establishment, the General Chairman docketed with the System Board of Adjustment a large number of unadjusted disputes, including the present one. Immediately following the enactment of the Amended Railway Labor Act of June 21, 1934, the General Chairman, after having handled it with Mr. H. L. Worman, Chief Operating Official of the carrier designated to handle such matters, submitted this dispute to this Division of the Adjustment Board.

(2) The employees involved in this dispute were, as to the performance of railway express business, employees of the carrier herein and covered by the Agreement between the carrier and the Order of Railroad Telegraphers, bearing date of May 16, 1928.

The intimate relationship between carriers generally and the Railway Express Agency, is shown by the fact that the Agency, although separately incorporated, is owned and controlled by the carriers over the lines of which its express business is transported. The identity of financial interests between the Frisco and the Railway Express Agency is revealed by the provisions of the contract between these parties. Article V, Section 1 of this agreement provides:

"Upon carload shipments consigned from one consignor to one consignee at one destination, moving under rates which exclude vehicle service, the Express Company shall first pay to the Rail Company 85 per centum of the gross revenue accruing on its lines from the rail haul (not including in the gross revenue from the rail haul any charges separately ascertainable for refrigeration, partial loading or unloading in transit and other accessorial services), the remaining 15 per centum of such gross revenue from the rail haul, together with the charges for any separate vehicle service, refrigeration, partial loading or unloading in transit and other accessorial services, shall remain in the revenue of the group (item (a), Sec. 4, of this Article) in which such charges accrue."

It is obvious, therefore, that under the terms of this agreement the savings which accrue from the reductions in express commissions are wholly or substantially passed back to the carrier. It is a matter of indifference to the Railway Express Agency whether the commissions are small or large. The carrier alone has a financial interest in the revenue accruing from express business on its lines.

The record contains evidence tending to show that the respondent carrier, in conference with cooperating carriers, took the initiative in the reduction of the express commissions as an economy measure. This significant statement appears in the joint statement of facts:

"Under date of May 10, 1930, file 1503-134, the Frisco Management notified the General Chairman of The Order of Railroad Telegraphers that it had arranged with the express company to reduce the carload commission rate to \$5.00 per car flat effective May 19, 1930."

Even though it be conceded that the Railway Express Agency took the initiative in the reduction of express commissions, the evidence is clear that it could not have made the reductions without the concurrence of the carrier involved.

It is to be noted that the carrier assumed full responsibility for the selection of the employees involved in this dispute and required them to transact the express business. The men themselves had no choice in the matter. The record indicates that matters of industrial relations were handled by the respondent carrier, and not by the Express Agency. Representatives of the men were told that issues arising in connection with the reduction of the express commissions should be referred to the carrier. There was evidence before the Division that the men and their representatives were warned that they should not attempt to settle these issues by direct negotiations with the Railway Express Agency.

(3) Express commissions are a part of the basic compensation of the employees in question and cannot be reduced by the respondent carrier except in the manner provided in the Agreement.

The carrier itself admitted that "express commissions are taken into consideration in arriving at hourly rate." In 1924, in resisting a demand of the Order of Railroad Telegraphers for an increase in pay, it filed with the United States Railroad Labor Board data on commissions, including railway express commissions which at that time it was paying its employees.

Article XIV (1) of the Agreement between the parties clearly demonstrates the interdependence between the hourly rate and express commissions. This provides:

"For positions covered by this Schedule where a part of the employee's compensation is paid in express commissions, in the event the commission is taken away, restored or created, the hourly rate will be adjusted to correspond with the importance of the position and other conditions, including wages paid by the Company for similar positions in the same territory. * * *

AWARD

The claim is sustained.
By Order of Third Division:

NATIONAL RAILROAD ADJUSTMENT BOARD.

Attest:

H. A. JOHNSON,
Secretary.

Dated at Chicago, Illinois, this 24th day of January 1936.