Award Number 392
Docket Number TE-325

NATIONAL RAILROAD ADJUSTMENT BOARD
Third Division

I. L. Sharfman, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

STATEMENT OF CLAIM.—

"Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Pacific Company (Pacific Lines) that the joint employees of the said Railroad Company and Railway Express Agency coming within the scope of the Telegraphers' Agreement with the Southern Pacific Company who receive a stated monthly salary from the Railway Express Agency for the rendition of certain express services which are not compensated for by any commission these employees receive from said Express Agency, improperly suffered a maximum 10% deduction from their salaries February 1, 1932, to April 1st, 1935, and that each such employee so adversely affected shall be reimbursed for monetary loss sustained through this arbitrary deduction from his express salary."

STATEMENT OF FACTS.—The employes submitted exparte the following statement of facts:

"An agreement known as the Chicago Agreement dated January 31st, 1932, effective February 1st, 1932, executed by the Class One Railroads, including the Southern Pacific Company, Pacific Lines, and the Standard Railroad Labor Organizations, including the Order of Railroad Telegraphers, contained the following:

" 'The signatories hereto, having been duly authorized by the said participating railroads and the participating organizations of employes of said railroads, as heretofore described to "negotiate to a conclusion certain pending issues concerning unemployment and wages," hereby agree that ten percent (10%) shall be deducted from each pay check of each of the said employes covered by this agreement for a period of one year beginning February 1st, 1932; that basic rates shall remain as at present; that this arrangement shall terminate automatically January 31st, 1933; * * *'

" 'This agreement also, is entered into by, and will apply to, the Pullman Company and the Railway Express Agency, represented by the Committee of Railway Presidents, and the respective employes thereof, represented, as to the Pullman Company by the Order of Sleeping Car Conductors, and as to the Railway Express Agency respectively by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes; International Association of Machinists, and International Brotherhood of Blacksmiths, Drop Forgers and Helpers.'

"Notwithstanding the exclusion of those employees represented by the Order of Railroad Telegraphers from the application of this deduction on the part of the Railway Express Agency, Inc., such deduction was applied to these employees represented by the Order of Railroad Telegraphers, by the Railway Express Agency, notice of deductions being issued in the following language:

" 'Wage Reduction—Effective February 1st, 1932.

" 'There became effective February 1st a uniform reduction of 10% in salaries and payments for special services affecting employees of Railroads and Express Companies, parties to the Wage Agreement, and in line with this the transfer payment at your office will be subject to reduction of 10%.

Express Agency made, and which is the subject matter of this dispute, was within the spirit and intent of the Chicago Agreement, and it is further the opinion of the carrier that, the petitioner is resorting to technicalities in the hopes of building a foundation for these claims; however, and notwithstanding, the carrier cannot lawfully be made a party to this dispute nor held liable for the deductions made by the Railway Express Agency. Beyond that the carrier has shown conclusively in Section 13, pages 15, 16, and 17, that, if it were responsible for said deductions which were made by the Express Agency, the carrier would have a legal offset, a complete defense and would be entitled to interpose a demurrer with respect to petitioner's attempt to illegally collect from the carrier said deductions.

"Carrier again asks the Board to decline to accept jurisdiction of the subject matter and to deny the request of the petitioner."

OPINION OF BOARD.—While the positions of the parties have been set forth above at great length, the essential issues involved are relatively simple, and they can be stated and disposed of very briefly.

The carrier's principal contention is that this Board is without jurisdiction to deal with the dispute here presented in the matter of express compensation, since the character of that compensation and all policies with respect thereto are fixed by agreements or understandings between the employes and the Railway Express Agency to which the carrier is not a party. Such contentions have frequently been urged upon this Board, and it appears to be its established view that these contentions are without merit. The disputes involving express compensation uniformly arise in connection with employes who are serving as joint railway-express agents. Primary employment is with the railroad, but under agreement between the railroad company and the express company, express service is also performed by these employes. Express compensation constitutes a part of the total compensation received by the employes, and this is true whether the express compensation takes the form of percentage commissions or of periodic payments for transfer or other service. Because of the intimate relationship existing between railroad compensation and express compensation, coupled with the fact that the extent and character of the express service to be performed is necessarily within the general control of the railroad, it has been repeatedly recognized that a sound and realistic adjustment of the relations between the three parties justifies procedure against the railroad company in connection with grievances against the express company. In the instant case not only are all of these grounds for assuming jurisdiction present, as well as the fact that the Southern Pacific Company is part owner of the Railway Express Agency, but in addition the Telegraphers' Agreement to which the carrier is a party expressly provides, in Rule 33 (c), that "telegraphers required to serve express or commercial telegraph companies will have the right to complain of unsatisfactory treatment at the hands of said companies and will receive due consideration from the railroad company." Under these circumstances there can be no doubt whatever that jurisdiction may properly be assumed by this Board. Compare Award No. 387, Docket TE-401, rendered by this Division February 24, 1937, and see Awards 181, 218, and 297 cited therein.

It is the further contention of the carrier that if it can be held responsible for the acts of the Railway Express Agency, then it would have been justified in making the same deductions which the Railway Express Agency has made. There appears to be no sound basis for this contention. Neither the Southern Pacific Company nor the Railway Express Agency was authorized to make deductions from the express compensation of telegraphers. The terms of the Chicago Agreement clearly disclose that the carrier's contract with the Order of Railroad Telegraphers concerned only deductions from pay checks for railroad service, and that the contract for like deductions between the Railway Express Agency and certain specified organizations of employes did not include the Order of Railroad Telegraphers. The deductions here in dispute, therefore, were made arbitrarily by the Railway Express Agency, without authorization by the Chicago Agreement, and in execution of the explicit obligation assumed by the carrier under rule 33 (c) of the current Telegraphers' Agreement, as well as in furtherance of the more general obligation attaching to it as primary employer of joint railway-express agents, it must assume the responsibility of effecting reimbursement for all monetary loss sustained by its joint railway-express agents as a result of these arbitrary deductions from their express compensation.

FINDINGS.—The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon and upon the whole record and all the evidence, finds and holds:

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 deductions here in dispute were made arbitrarily by the Railway Express Agency, and that under the prevailing Telegraphers' Agreement responsibility attaches to the Southern Pacific Company to effect reimbursement for monetary loss sustained by its joint railway-express agents as a result of these arbitrary deductions.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: H. A. JOHNSON
Secretary

Dated at Chicago, Illinois this 1st day of March, 1937.