

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Arthur M. Millard, Referee

PARTIES TO DISPUTE:

ORDER OF RAILROAD TELEGRAPHERS

MISSOURI PACIFIC LINES IN TEXAS AND LOUISIANA

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers on Missouri Pacific Lines in Texas and Louisiana that the normal express commission rate of 3%, with a maximum of \$10.00, per carload express shipment on the territory of the former Gulf Coast Lines, and the normal express commission rate of 3%, with no maximum, per carload express shipment of the territory of the former International-Great Northern Railroad, paid railroad agents by the Railway Express Agency, Inc., which rates were arbitrarily reduced by the express company with the concurrence of the railroad management to 3% with a maximum of \$5.00 per carload as of July 1, 1930, be restored to the territories as existing before the change was made, and all agents affected be retroactively reimbursed to July 1, 1930, for the monetary loss sustained through the arbitrary reduction."

STATEMENT OF FACTS: In their ex parte submission the employees stated the facts as follows:

"Prior to the consolidation approximately in 1925 for the purpose of operation of the properties of the former Gulf Coast Lines and the International-Great Northern Railroads into what is now termed the Missouri Pacific Lines in Texas and Louisiana, the railroad station agents on the Gulf Coast Lines, who were required by the railroad to also handle the express business at their stations as agent for the American Railway Express Company, were paid a commission rate of 3%, with a maximum of \$10.00, per carload express shipment; and on the International-Great Northern Railroad the railroad station agents, who were required by the railroad to also handle the express business at their stations as agent for the American Railway Express Company, were paid a commission rate of 3%, with no maximum, per carload express shipment.

"The Railway Express Agency, Inc., succeeded the American Railway Express Company on these properties on March 1, 1929.

"The above noted carload express commission rates were continued in effect by the Railway Express Agency, Inc., without change until July 1, 1930.

"On July 1, 1930, the Railway Express Agency, Inc., through its Superintendent, and with the concurrence of the management of the Missouri Pacific Lines, arbitrarily (by bulletin notice to all railroad station agents concerned) reduced the carload commission rate on both territories to 3%, with a maximum of \$5.00 per carload express shipment, without notice, conference or agreement with the duly designated representatives of the agents."

The Carrier stated the facts as follows:

pute between the Express Company and The Order of Railroad Telegraphers, as any decision rendered by the Board could not be placed in effect by the Carrier."

OPINION OF BOARD: This case represents a claim of the General Committee of the Order of Railroad Telegraphers for the restoration of the former commission rate paid to Railroad Express Agents on the lines of the Carrier by the Railway Express Agency, Inc., and which were reduced effective July 1, 1930, and for the retroactive reimbursement of such agents for any monetary loss sustained by reason of the reduction in the commission rate.

In its submission the General Committee states that the Railway Express Agency, Inc., succeeded the American Railway Express Company on the properties of the Carrier on March 1, 1929, and that the regularly established express commission rates were continued in effect without change until July 1, 1930. The statement is further made that on July 7, 1930, the Railway Express Agency, Inc., through its Superintendent, and with the concurrence of the management, reduced the commission rate of the territories indicated, and to the extent outlined in the claim, effective July 1, 1930, without notice to, or conference or agreement with the duly designated representatives of the Agents.

The General Committee contends that the Carrier violated Rule 24, Paragraph (a) and Rule 26 of the existing agreement between the parties, effective March 1, 1930, in that the basic wages of the Agents affected were reduced with the concurrence of the Carrier or railway management by the reduction made in express commissions, and by the establishment of a less favorable rate of pay than was evidenced in the primary conferences and agreement between the General Committee and the Carrier, and without notice to or conference and agreement with the General Committee.

The Carrier contends that the National Railroad Adjustment Board is without jurisdiction in this case for two reasons, viz:—

1st. This was not a pending and unadjusted dispute under the Amended Railway Labor Act, approved June 21, 1934; and

2nd: The Carrier is not responsible for the payment of express commissions under its agreement with the Order of Railroad Telegraphers.

Considering the first contention of the Carrier, that this Third Division of the National Railroad Adjustment Board is without jurisdiction for the reason that this case was not a "pending and unadjusted" dispute on the date of the Amended Railway Labor Act, June 21, 1934, the Board submits that in the protests made during 1930 by the representatives of the employees or General Committee over the reduction made in the commission rates, effective July 1, 1930, a dispute did arise which was pending and unadjusted at the time the Amended Railway Labor Act was approved; while further conditions with respect to an adjustment of the dispute are evidenced in the claim, and furnish a reasonable conclusion to what is referred to as an unreasonable delay in the presentation of the claim.

However that may be, the application of the Amended Railway Labor Act to this claim is clearly indicated, as the Act was not limited to cases pending and unadjusted on the date of its approval, but in the proper application and interpretation of Paragraph (i) Section 3 in which the term "pending and unadjusted" appears, the paragraph applies broadly to "The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions, including cases pending and unadjusted on the date of the approval of this Act." In other words the inclusion of the term "pending and unadjusted" did not exclude the application of the paragraph to disputes between the employees and carrier or carriers growing out of grievances, etc., but made cases that

were pending and unadjusted inclusive with such disputes as had not as yet ripened into cases or claims at the time of the approval of the Act.

Under this interpretation of Paragraph (i) of Section 3 of the Amended Railway Labor Act, the Board rules that this instant case and the dispute involved is properly before this Third Division of the National Railroad Adjustment Board.

With respect to the Carrier's further contention that it is not responsible for the payment of express commissions under its agreement with the Order of Railroad Telegraphers, there is no doubt, in the opinion of the Board, that the commissions paid by the Express Agency, at the time the agreement was ratified, formed the basis upon which the agents' compensation from the Carrier was founded and, in permitting the basic wages of the agents affected to be disturbed by establishing a less favorable rate of pay through the reduction of express commissions there is a responsibility resting upon the Carrier as the primary employer, and a basis for the contention of the General Committee that, while the Express Company made the reduction in the express commissions, it could not have made those reductions without the consent and concurrence of the Carrier.

Reference has also been made in the files of this case to Article XI, Section 1 of the agreement between the lines of the Carrier and the Railway Express Agency, Inc., effective March 1, 1929, covering the subject of joint employees. In this rule a further definite responsibility is established as resting upon the Carrier in connection with the reduction in express commissions, in that in such arrangements as are made for joint employees, these are also jointly made by the parties "upon such terms as may be agreed upon by the two companies."

Considering further the responsibility of the Carrier and the joint agencies established, the Board submits that inasmuch as the Carrier required its agents to handle express and permitted them to receive compensation or commissions from the Express Company for such handling, the fact is evidenced that the Carrier recognized the handling of express as a part of the agent's duties, and predicated the amount of compensation or wages to be paid by the Carrier to the agents affected upon an estimate, knowledge or reasonable assumption of the express commissions or compensation which the agents were to receive from the performance of those duties, incident to their railroad work, which were performed for the express agency.

Insofar as the agreement between the Carrier and General Committee is concerned, the Board submits that the commission rates established prior to the reduction, existed at the time the agreement between the parties was ratified, and had existed for some time previous to the ratification of that agreement, and form a sound basis for the conclusion that the original express commission paid before the reduction was a determining factor or means of arriving at a mutual understanding between the parties to the agreement of the compensation to be paid by the Carrier to the representatives of the joint agencies affected by the reduction in the commission rate.

In view of these conditions the Board submits that the commissions paid by the Express Agency at the time the agreement between the employees and the Carrier was ratified formed as much a part of the compensation of the employees or agents affected as the figures written into the agreement for the railroad service, and disturbing the basic rate upon which the Agents' compensation from the Carrier was founded and permitting the express commissions to be reduced without conference and agreement, the Carrier violated the principles of the existing agreement between the parties.

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 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 in disturbing the basic rate upon which the agents' compensation from the Carrier was founded and by permitting the Express Agency to reduce the express commission without conference and agreement, the Carrier violated the terms and principles of the existing agreement between the parties.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary.

Dated at Chicago, Illinois, this 2nd day of November, 1937.