

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Dozier A. DeVane, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**BERRYMAN HENWOOD, TRUSTEE,
ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF
TEXAS, DEBTOR**

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers on the St. Louis Southwestern Railway Company of Texas that, the agent-telegrapher at Omaha, Texas who is required by the railway company to also serve the Western Union Telegraph Company as its manager at Omaha and handle its communication service on a basis of 10 percent of the revenue accruing on business forwarded, paid and received collect as compensation therefor, shall continue to be compensated on that basis for all Western Union communication business transmitted and received at Omaha, including all business handled by teleprinter machines installed in the offices of W. G. Farrier and John Morris, produce merchants at Omaha, retroactive to June 1, 1937, the date on which such commission on business handled by the teleprinter machines was discontinued to the agent-telegrapher by unilateral action of the Western Union Telegraph Company with the concurrence of the railway company."

STATEMENT OF FACTS: The following statement of facts was jointly certified by the parties.

"An agreement bearing date December 1, 1934 as to rates of pay and rules of working conditions is in effect between the parties to this dispute. The position of agent-telegrapher at Omaha, Texas is covered by said agreement.

"Prior to November 1, 1935, agent-telegrapher at Omaha was paid commissions accruing from the handling of all Western Union commercial business at Omaha. On November 1, 1935 a teleprinter was installed in Farrier Office and on April 1, 1937, a similar machine was installed in the Morris office, and all commissions accruing from the commercial service were paid to agent-telegrapher until June 1, 1937. Subsequent to May 31, 1937 all commissions on business handled in their offices were paid direct to Messrs. Farrier and Morris."

POSITION OF EMPLOYEES: "The position of agent-telegrapher at Omaha, Texas is included in the Telegraphers' Agreement and covered by the rules governing working conditions and rates of pay incorporated in the agreement. The agent-telegrapher at Omaha was required, pursuant to past practice and the terms of the Telegraphers' Agreement, to also act as Manager for the Western Union Telegraph Company and perform all the work in connection therewith for which he received a commission of 10 percent on all telegrams sent paid and received collect.

"Article 28-6 quoted above in no way provides for an adjustment account installation of teleprinter service in one or more up-town offices at any point. As a matter of fact, teleprinters have been installed throughout the territory and no adjustments have been made account installation. For many years the established policy of the Western Union has been to pay a commission to the Railway Agent on business handled, accounted for, and collected for at his office. The Railway agent is not required to handle in any manner the messages that are transmitted or received over the teleprinters, nor is he required to collect or account for the business handled. In this case the Western Union office at the Railway station at Omaha was not discontinued, therefore, Rule 28-6 is inapplicable as it applies only when the commissions are fully withdrawn, and not to instances, as in this case, where they decrease due to change in business conditions or other methods of handling the business.

"The United States Railroad Labor Board in its Decision No. 757 approved as of March 16, 1922, and in its Decision 2025, in November, 1923, reaffirming the rule promulgated in Decision 757, held that a rule identical with Carrier's Rule 28-6 quoted above was just and reasonable and said rule was thereby made effective on the roads upon which they were applicable, including the St. Louis Southwestern Railway Company of Texas. The carrier is unable to find where either the United States Railroad Labor Board or your Board has ever given a decision granting a change in the rate of pay to an employee unless commissions are entirely discontinued.

"The Western Union has contracted with the Carrier to handle its telegraph business in its telegraph stations only and not its business that is handled in any other manner.

"There is no rule or practice in effect on the property of this carrier that would sustain the claim of the Employees that the agent at Omaha is entitled to a commission on business not handled directly or indirectly by him, nor under Rule 28-6 is he entitled to any adjustment in his compensatory salary.

"All data submitted in Carrier's position has been presented to the duly authorized representative of the Employees."

OPINION OF BOARD: The Agent-Telegrapher at Omaha, Texas, also serves as agent for the Western Union Telegraph Company at that point for which he is paid on the basis of 10% of the revenue accruing on business forwarded paid and received collect.

About November 1, 1935, the Western Union installed a teleprinter in the office of W. G. Farrier, a commission merchant of Omaha. In April, 1937, Mr. Farrier expanded his business by taking into partnership Mr. John Morris and as a result of the increased business the Western Union installed a second teleprinter in the office of Farrier and Morris; made their office a Class 11-A Western Union Office and paid them 10% commission on all business handled through their office.

When the teleprinter was first installed in the office of W. G. Farrier in 1935 the Western Union continued to pay the Agent-Telegrapher his regular commissions on the Farrier business, but when the Class 11-A telegraph office was established in the office of Farrier and Morris in 1937, the Western Union discontinued the payment of commissions to the Agent-Telegrapher on business handled through the office of Farrier and Morris. The Agent-Telegrapher continued to serve as agent for the Western Union and received commissions on all business handled through his office at the Railway Station.

The claim is for 10% commission on all business handled through the office of Farrier and Morris retroactive to June 1, 1937. Several opinions of the Board are cited in support of the claim in this form. See Awards 297, 313 and 507. These opinions all deal with commissions paid railroad employees by the Railway Express Agency. The Express Agency being sub-

ject to the provisions of the Railway Labor Act, it was held in these cases that it was a violation of said Act for the Express Agency to change the Express commissions except in conformity with the provisions of said Act.

The Western Union Telegraph Company is not subject to the Railway Labor Act and the inhibitions contained in said Act against changes in rules, rates of pay and working conditions without notice and conference are not applicable to it. Therefore, the principle announced in the cases referred to are not applicable in this case.

Petitioner further relies upon Article 28-6 of the prevailing agreement which provides:

"When express or Western Union Commissions are discontinued or created at any office, thereby reducing or increasing the average monthly compensation paid to any position, prompt adjustment of the salary affected will be made conforming to rates paid for similar positions."

This Article of the Agreement in no way makes the carrier liable for Western Union Commissions. It simply provides that when such Commissions are discontinued "prompt adjustment of the salary affected will be made conforming to rates paid for similar positions." This expresses the complete obligation of carrier to employee involved in this case. The only claim the employee may make against carrier under this rule of the agreement is for an adjustment of the compensation paid him by carrier when Western Union Commissions are discontinued. The rule, however, does not obligate carrier to increase the pay of an employee when Western Union Commissions are discontinued. It simply provides that his compensation will be adjusted to conform to the rates paid for similar positions.

Carrier contends that Western Union Commissions must be entirely discontinued before Article 28-6 is applicable and as they were not entirely discontinued in this case this claim should be denied on that ground. That question is not before the Board in this case as the claim in the form submitted does not present a justifiable question and it would be merely obiter dictum to pass upon that contention in this case.

The claim in the form presented being improper the question does arise, however, whether it should be dismissed or remanded to the parties for further handling on the property. The latter procedure has been followed in other cases (See Awards Nos. 313 and 316), where similar questions have arisen and that procedure will be followed in this case. The case will be remanded to 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 the claim should be remanded to the parties for further handling on the property.

AWARD

Claim remanded.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division.

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 27th day of July, 1939.