

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Wiley W. Mills, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

ATLANTA AND WEST POINT RAILROAD COMPANY

THE WESTERN RAILWAY OF ALABAMA

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers on Atlanta and West Point Railroad-The Western Railway of Alabama that, the established transfer express allowance of \$15.00 per month, paid the railroad station agent at Milstead, Alabama, by the Railway Express Agency, Inc., for the transfer of express matter between railroads at that station, which allowance was arbitrarily discontinued entirely as of August 15, 1930, and was partially restored as of March 1, 1935, and November 1, 1936, by the Railway Express Agency, Inc., with the knowledge and consent of the railway company, without notice to or conference and agreement with the representative committee of the employes, shall be restored in full and the railroad station agent at Milstead be retroactively reimbursed for the difference due him from the date the changes were arbitrarily made."

EMPLOYES' STATEMENT OF FACTS: "There is in effect between the parties to this dispute an agreement dated November 1, 1923.

"For several years prior to August 15, 1930, a rate of \$15.00 per month to cover the transfer of all express matter between trains of The Western Railway of Alabama and the Birmingham and Southeastern Railroad had been in effect at Milstead, Ala., which transfer allowance was in addition to the normal express commissions paid to the Agent at Milstead, Ala., and was a part of his regular monthly compensation.

"On August 15, 1930, the express transfer allowance was arbitrarily discontinued entirely by the Railway Express Agency, Inc., with the knowledge and consent of the Railway Company, and without notice to or conference and agreement with the Committee. Subsequent to August 15, 1930, the duties of transferring express between trains at Milstead, Ala., were not discontinued and were performed by the Agent without compensation therefor until March 1, 1935, on which date the Railway Express Agency, Inc., by unilateral action, established a rate of \$5.00 per month to cover the transfer service.

"Effective November 1, 1936, the \$5.00 per month transfer allowance was increased to \$10.00 per month by unilateral action on the part of the Railway Express Agency, Inc., which rate is still in effect.

"Every reasonable effort has been made by the Committee since the established transfer allowance was discontinued to either have the Agent

the instant case. The Railway Express Agency and it alone assumed the obligation of paying that allowance. It paid it for a number of years prior to 1930. It discontinued it in 1930. At that time the claimant Agent and his representatives handled the matter not with the respondent carriers but with the Railway Express Agency thereby recognizing that the Express Agency was the primary obligor in connection with such allowance.

"The carriers have shown that the Railway Express Agency is just as amenable to the processes of the Railway Labor Act as any railroad and that the Express Agency was the sole respondent in two awards issued by the Third Division. Therefore, respondent carriers contend the claimants herein should have proceeded against the Railway Express Agency and not against the respondent carriers. The petitioners make no explanation whatever of their failure to proceed against the Railway Express Agency.

"The carriers have shown that referees in several awards issued by the Third Division have indicated it is the nature of the existing agreements which should determine who should be the respondent in cases involving express commissions or allowances, and that cases involving express commissions cognizable by the Third Division and involving railroad carriers are those in which there exists a rule requiring adjustment in the railroad salary when express and/or other commissions are discontinued or initiated. No such rule exists on respondent carriers."

OPINION OF BOARD: The claim, the statement of facts and the positions and contentions of the parties are sufficiently set forth hereinabove.

At Milstead, Alabama, one T. C. Carr had been employed as agent-telegrapher for many years by the Western Railway of Alabama at sixty-eights cents per hour and during most, if not all, of that time, he had also been employed by the Southern Express Agency, and its successors, as agent for transferring express from the Western Railway of Alabama to the Birmingham and Southern Railroad, whose tracks intersect or are near by there, and vice-versa.

On August 9, 1930, H. M. Smith, Superintendent of the Railway Express Agency wrote the agent at Milstead, Alabama, as follows:

"Effective August 15th the present allowance of \$15.00 per month for transfer service at Milstead will be discontinued."

On August 21, 1930, Mr. Carr wrote Superintendent Smith as follows:

"Dear Sir:

You wrote me under date of August 9th as follows:

'Effective August 15th the present allowance of \$15.00 per month for transfer service at Milstead, will be discontinued.'

Kindly advise just how you expect the transfer business at this station to be handled. * * * *

I understand, of course, that it is your privilege to discontinue the transfer agency, but I would like to be advised that I am also relieved of any responsibility in connection with same, and if I am not, I feel like this service is entirely separate from my duties as local express agent, and that the compensation should be continued.

Kindly advise and oblige,

Yours truly,

cc

/s/ T. C. Carr, Agent

Mr. G. K. Williams, Supt. W. of A.

Mr. B. Vowell, Route Agent, Express Co."

On February 24, 1931, Carr again wrote to Mr. H. M. Smith, Superintendent of Railway Express Agency, Inc., Atlanta, Georgia, as follows:

"Dear Sir:

Effective August 15, 1930, my services as transfer Agent were discontinued. * * *

I am writing to ask if you will not restore this transfer service beginning March 1st and allow me the \$15.00 per month as formerly and I will see that such assistance is rendered in the transfer that one man can render, and that these shipments coming in when there is no messenger here are taken care of. * * *

I shall appreciate a reply by return mail as I can arrange with the man who is now working porter to assist me and pay him myself. After March 1st, however, he will be out of pocket and I cannot get hold of him.

Yours very truly

CC

/s/ T. C. Carr, Agent

Mr. G. K. Williams, Supt. Transpn.
Atlanta, Ga."

On August 31, 1930 Mr. J. M. Cleveland, General Chairman of the Telegraphers' Committee (which committee represents the employes of the Railway coming within the scope of the telegraphers' agreement) addressed a letter to the Superintendent Transportation of the Railway as follows:

"I am enclosing letter from Mr. H. M. Smith, Superintendent Railway Express Agency, to Mr. T. C. Carr, Agent, Milstead, Ala., advising him that the present allowance of \$15 per month for transfer service at Milstead will be discontinued August 15, 1930.

Mr. Smith advised Mr. Carr that the \$15 allowance will be discontinued but did not advise Mr. Carr to discontinue performing the transfer service. It is nothing but right and fair that if Mr. Carr is still performing the transfer service that he should receive the regular allowance which has been the practice at this station for years.

As the Telegraphers have no contract or agreement with the Express Agency, I am referring the matter to you for handling with the Express Agency. I am sure it is not your desire for your employes to perform service for another corporation without compensation.

We will certainly appreciate any assistance you might be able to give us in this matter."

On October 11, 1930, the Superintendent of Transportation wrote General Chairman Cleveland as follows:

"We have handled this matter with the Express Agency and Superintendent Smith now advises us that they have revised their method of handling so that there should be no occasion for Agents to handle the transfer."

Following the exchange of letters as quoted, no further request or communication of any kind was made upon or addressed to the Railway in connection with the matter, until more than seven years thereafter.

When the General Chairman of the Telegraphers wrote a letter dated December 18, 1937, "requesting a conference with the management 'regarding a number of questions of interest to the Telegraphers,'" listed among the questions was:

"Arbitrary discontinuance of Express transfer allowance at Milstead, Ala. and claim of the Agent at Milstead, Ala. for the monetary loss sustained therefrom."

Prior to this no claim whatever by or on behalf of Carr was made against the Railway Company and, if this be regarded as a claim, it is not clear whether it refers to a claim against the Express Agency or against one of the railroad companies. Promptly after a claim was made against the Express Agency in 1930, the railroad company had been asked to use its influence with the Express Agency soon after it had stopped the payment of \$15 per month; there was acquiescence by Mr. Carr for a time and then he again wrote the Express Agency urging restoration of the pay and eventually received, for a time, \$5 per month and later \$10 per month. Even on November 7, 1936, Mr. Carr closed his letter to General Chairman Kirkland as follows:

"After reading the file, let me know if you think it in order to make claim."

That is a conclusive admission that no claim against the carrier was pending and unadjusted on June 21, 1934, when the amended statute became effective.

There was nothing in the agreement between the Order of Railroad Telegraphers and the Atlanta and West Point Railroad or Western Railway of Alabama covering the situation. Therefore there was no violation and if there was no violation, there could be no continuing violation, and there certainly was no case against the carrier pending and unadjusted on June 21, 1934, when the National Railway Labor Act became effective.

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 no jurisdiction to hear and decide this case as there was no dispute growing out of any grievance nor any claim or case pending and unadjusted within the meaning of the Railway Labor Act as approved June 21, 1934, against the Railway Companies.

AWARD

Claim dismissed without prejudice.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 6th day of December, 1939.