

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

George E. Bushnell, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE ATCHISON, TOPEKA & SANTA FE RAILWAY

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers on Atchison, Topeka & Santa Fe Railway that the Atchison, Topeka & Santa Fe Railway which is arbitrarily requiring its agent at Arcadia, California to serve the Railway Express Agency, Inc., as express agent on the Pacific Electric Railway at Arcadia without compensation shall either cause the Railway Express Agency, Inc., to compensate the Santa Fe Agent at Arcadia at the established commission rate paid agents for such express service rendered on the Pacific Electric Railway, or shall compensate the agent accordingly, and effective as of the date the express service was arbitrarily required of the agent."

EMPLOYES' STATEMENT OF FACTS: "An Agreement, bearing effective date of December 1, 1938, is in effect between the parties to this dispute.

"September 12, 1932, the Southern Pacific Railroad agency at Arcadia, which acted as agent for, and received commission from, the Railway Express Agency, Inc., was discontinued. Concurrent therewith the Santa Fe agent was then, and has since been, required to serve the Railway Express Agency, Inc., as express agent on the Pacific Electric Railway.

"No inbound or outbound express shipments are transported on Santa Fe trains. The Pacific Electric Railway does not maintain an agency at Arcadia. The Santa Fe agent is not a joint Santa Fe-Pacific Electric employee.

"The location where express shipments are loaded into, and unloaded from Pacific Electric cars is approximately seventy (70) yards distant from the Santa Fe Depot, into a street and to a public highway, entirely removed from Santa Fe premises."

POSITION OF EMPLOYES: "The preamble, and Scope, of the Telegraphers' Agreement, reads respectively:

"The following schedule of rules and regulations is hereby agreed upon by The Atchison, Topeka and Santa Fe Railway Company, Gulf, Colorado and Santa Fe Railway Company, Panhandle and Santa Fe Railway Company, and their employees represented by The Order of Railroad Telegraphers."

"This schedule will govern the employment and compensation of Agent-Telegraphers, Agent-Telephoners, Telegraphers, Telephone Operators (except switchboard Operators), Towermen, Levermen, Tower and Train Directors, Block Operators, Staffmen, and such Agents and other employees as may be shown in the appended wage scale."

Awards 595 and 1075. The instant claim was first presented in letter addressed to the Carrier's Superintendent by the Local Chairman under date of February 20, 1940, as set forth in the 'Carrier's Statement of Facts.'

"(5) The request for the payment of express commissions to the agent-telegrapher covered by the Telegraphers' Schedule for handling express at Arcadia, such allowances never having been paid such employees since discontinued in July, 1917, is an attempt to increase the basic rate of such employees, something which it is not within the province of this Board to grant. See Awards 181, 218, 297, 298, 392, 507, 522, 528, 537 and 765.

"Furthermore, Award 999 of this Division dismissed without prejudice a similar claim for restoration retroactively to August 15, 1930 of an express allowance because (a) there was nothing in the Agreement in support of the claim, and (b) no claim against the Carrier was pending and unadjusted on June 20, 1934. The same considerations hold true at Arcadia. No rule of the current Telegraphers' Schedule requires the payment of express commissions to the agent-telegrapher at Arcadia. As set forth in the 'Carrier's Statement of Facts,' express commissions have not been paid Santa Fe employees for handling express since July 1, 1917, on which date the Railway Company undertook to and did substantially adjust the wages of such employees.

"Article XV, quoted in the 'Carrier's Statement of Facts,' was incorporated in the Telegraphers' Schedule as a result of U. S. Railroad Labor Board Decision No. 757, effective March 3, 1922, almost five years after the payment of express commissions had been discontinued on this property, with the attendant adjustment in rates of pay. It is apparent that this rule has no bearing on the instant claim, and the employees' failure to cite it in support of their claim is their recognition that it is not applicable in the instant dispute.

"Article XVII, reading:

'(a) Regularly assigned employees will receive one (1) day's pay within each twenty-four (24) hours, according to location occupied or to which entitled, if ready for service and not used, or if required on duty less than the required minimum number of hours as per location, except on Sundays and the designated holidays.

'(b) This rule shall not apply in cases of reduction of forces nor where traffic is interrupted or suspended by conditions not within the control of the Company.'

presupposes that for the payment of a day's pay the Carrier is entitled to a full day's service in accordance with its right as an employer to supervise and direct the services of its employees.

"Carrier has not been served with a copy of employees' submission, other than its 'Statement of Claim,' consequently it is not informed with respect to the alleged facts, contentions and/or allegations which employees' ex parte submission may contain. The Carrier, therefore, has dealt only with the contentions and/or allegations heretofore presented to the Carrier by the employees and such other matters as in its considered judgment are pertinent to the dispute. The Carrier, however, reserves the right to submit evidence in rebuttal of any alleged facts, contentions and/or allegations made by the employees in their ex parte submission, or to any other submission, which employees may make to your Honorable Board in this case."

OPINION OF BOARD: There is no dispute as to the facts. The claim was instituted some 7½ years after the Santa Fe Agent at Arcadia, California began to handle express business moving at that point via Pacific Electric Railway. The cars of this Railway are loaded and unloaded on the property of the Pacific Electric approximately 270 feet from the station of the Santa Fe. The agent is not a joint Santa Fe Pacific Electric employee.

No inbound or outbound express moves from Arcadia on Santa Fe trains, and the Pacific Electric does not maintain an agency at Arcadia. The agent does not receive any additional compensation or commission for handling express.

In the Schedule of rates, effective April 1, 1925, appended to the Telegraphers' Schedule effective February 5, 1924, the compensation of the Santa Fe Agent-telegrapher at Arcadia was fixed at 71¢ an hour and in the schedule effective December 1, 1938 at 76¢ an hour. The agent began to handle express on the Pacific Electric, September 12, 1932, seven years after the Agreement of 1925 and six years before the Agreement of 1938. The claim was filed February 20, 1940.

The situation is characterized by the employees as a "farming out" by the Santa Fe of its Agent to either the Pacific Electric or the Railway Express.

Under Award 12 of the First Division the claim should be sustained. It was there held that the "carrier should not require the performance of work for another carrier without reaching a prior Agreement with its employees."

However, in the instant case we have a different situation controlled as follows:

(1) On July 1, 1917, the Carrier discontinued joint express agencies and the payment of commissions on express business. At that time the carrier adjusted wages in conformity to a rule similar to Article XV of the current Agreement.

(2) In 1924 and 1925 the parties agreed upon the compensation to be paid the Agent Telegrapher at Arcadia.

(3) In 1932 the carrier unilaterally added the handling of express for the Pacific Electric to the duties of its agent.

(4) In 1938 the parties again agreed upon the Agent's compensation and agreed upon a schedule of rules and regulations effective December 1.

In Award No. 389, Referee Sharfman said:

"The request of the employees cannot be granted without alteration by this Board of the scope of the Agreement between the parties, which is beyond the bounds of its authority. The positions here involved were in existence prior to the negotiation of the prevailing Agreement and might well have been covered by that Agreement, but in point of fact, they were not included within its terms. The Telegraphers' Agreement operative on this property contains not only the scope rule, but a list of the positions and their rates of pay as fixed by the parties. Since the actual scope of an Agreement can be made as broad or as narrow as the parties may stipulate, the positions thus listed must be taken as the concrete expression of the carrier and its employees with respect to the effective scope of the Agreement. It is not within the authority of this Board to alter the terms of an Agreement either by including positions not covered thereby or by excluding positions embraced therein. The end here sought by the employees can properly be achieved only through the processes of negotiation. Compare Award 383, Docket TE-379, rendered by this Division, February 19, 1937."

In Docket No. TE-1257 the employees contended with respect to the Agents at Lamy, New Mexico and Ottawa Junction, Kansas that this same carrier could not "unilaterally farm out, hire out, or loan its agents and/or telegraphers to another carrier, the Express Agency, without their consent and without making prior agreement with the Organization, to perform express transfer service."

Referee Tipton in Award No. 1257, Docket No. TE-1257, denied the claim at Lamy and allowed the claim at Ottawa Junction, saying:

"The effective date of the current agreement was December 1, 1938. Prior to that time the employees at Ottawa Junction did not perform any express service there. He did not begin to perform this service until June 11, 1939. Certainly this service at that place was not taken into consideration when this Agreement was ratified. The Board holds that he is entitled to compensation for express transfer service performed at Ottawa Junction, or he should not be required to perform this service.

"On the other hand, in reference to the claim at Lamy, New Mexico, the record shows that express transfer service was handled by the employees there since October 1, 1926. It must be assumed that that service was taken into consideration when the rates of pay for the employees at Lamy, New Mexico were negotiated. The Board is of the opinion that this part of the claim should be denied."

Under the foregoing awards of this Division, the claim must be denied.

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 no violation of the Agreement has been shown.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 18th day of September, 1941.