Award No. 2054

Docket No. TE-1991

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Ernest M. Tipton, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE ALTON RAILROAD

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Alton Railroad,

(1) That the Carrier deliberately violated the Telegraphers' Agreement by failing to pay G. H. Schwartz, the regularly assigned agent-telegrapher-leverman at its Godfrey, Illinois, station, the full amount of wages he earned solely by his labor for and services to said Carrier during the months of February, March, April and May, 1941, as contracted for in the wage scale of said agreement;

(2) That the Carrier did, without due process of Law, and contrary to said Schwartz' wishes, improperly confiscate a portion of the wages due him during the aforesaid months of 1941, which he earned solely by his labor for and services to the Carrier and due to be paid him during those four months, which deductions were made until a total amount of $133.22 allegedly due to the Railway Express Agency, Inc., by Schwartz had thus been collected involuntarily from him by the rail carrier in behalf of and for the Railway Express Agency, Inc., a separate carrier and employer of Schwartz; and,

(3) That the rail carrier shall be required to pay over to the said Schwartz the remainder of the full amount of wages due him which he earned solely by his labor for and services to The Alton Railroad during the said four months of 1941, as its agent-telegrapher-leverman at Godfrey.

EMPLOYES' STATEMENT OF FACTS: An agreement bearing date February 16, 1929, as to rules of working conditions, and December 1, 1941, as to rates of pay, is in effect between the parties to this dispute.

The position of agent-telegrapher-levereman at Godfrey, Illinois, to which G. H. Schwartz is the regularly assigned incumbent, is covered by the said agreement.

Effective with the month of February, 1941, and continuing through the months of March, April and May, 1941, the Carrier deducted an amount of $16.65 on each semi-monthly payroll from the wages due agent Schwartz for his labor and services to the Carrier as its agent-telegrapher-leverman at Godfrey until a total amount of $133.22 allegedly due the Railway Express Agency, Inc., had thus been deducted.

The Alton Railroad Company is a separate carrier under the terms of the Railway Labor Act, and G. H. Schwartz is individually employed by it as its agent-telegrapher-leverman at Godfrey under the conditions of the Telegraphers' Agreement.

was not the party with whom to deal. Their claim growing out of the 1938 transactions was against the Carrier, not against the Express Agency. Even in this case, all their dealings have been with the Carrier, this course of action being in accordance with the announced conclusions of your Board.

Since it is clear that so far as this dispute is concerned, the Carrier is the responsible party, it follows that there is no foundation to the claim that the Carrier has confiscated a portion of the wages due the agent. As has been said, the situation was that the Carrier owed the agent wages from time to time in accordance with the current agreement, and that the agent became indebted to the Carrier in the amount here involved due to his unjustified refusal to pay wages to the extra help employed at Godfrey during 1939 and 1940. Under these circumstances there can be no proper criticism of the action of the Carrier in recovering the amount due from the agent through deduction of that amount from wages due him. A confiscation of the agent's wages, as claimed by the Employes, implies that the agent has not received the amount to which he is entitled under the current agreement. Yet in this case, the agent has received everything to which he is entitled. He has received all of the wages due him from the Carrier and the Express Agency for services performed by him. He has nothing whatever coming to him. Had he elected to sue in court for the amount here involved, the Carrier would have had a full legal right to offset that claim by the assertion of the liability which has now been satisfied by the deductions from the agent's salary. As this case now stands, the Express Agency, the Carrier and the agent are in precisely the position they should occupy under the agreement and the prior decisions of your Board. If the Carrier is required to pay the amount claimed in this case, such a payment will only create a right in the Carrier to recover from the agent the amount so paid.

3rd. The third claim of the Employes is that the Carrier shall be required to refund the money here involved. This, however, is only a conclusion drawn from the assertion of the prior claim. For the reasons given, it is certain that in deducting from the agent's salary the amount here involved, the Carrier did not violate any provision of the agreement between it and the Employes, and that it violated no property or other right of the agent. There is no support for the claim of the Employes under that agreement, under the practice which has obtained for thirty-five years, or under any decision of your Board. On the contrary, the circumstances require that the claim should be denied as being without merit.

OPINION OF BOARD: Award No. 1173 of this Board involved the question as to who should pay extra help for the purpose of loading express at Godfrey, Illinois, during the asparagus season for the year 1938. That award held that this expense should be paid for by the Claimant and not the Express Agency or the Alton Railroad.

This claim involves the same question between the same parties at Godfrey, Illinois, for the years 1939 and 1940. The petitioners contend that they have additional evidence than was presented in Award No. 1173. The Board has examined the additional evidence, and finds that it is not materally different than that presented in the previous award and holds that it was the obligation of the Claimant to pay this additional expense for the years 1939 and 1940.

The Claimant informed the Express Agency that for these two years he would not hire anyone to assist him with handling of the asparagus for these two seasons. The Express Agency then hired a helper. The Claimant contends that the Express Agency had no right to hire this extra help, and if it did, he should not pay for the help. To this contention the Board cannot agree. The agreement contemplated that the Claimant would hire extra help during the asparagus season, and since he refused to, the Express Agency had the right to hire extra help and charge the expense to the Claimant, which it did.

The Claimant did not remit all the money due the Express Agency for the years 1939 and 1940, but deducted the amount he paid to the extra help. In 1941, the Respondent deducted from the Claimant's salary this sum. The Claimant contends that Respondent had no right to do so. He overlooked the fact that the Express Agency was the respondent's agent to handle the express on its system. (See Article XI, Section 1, of the agreement between the Railway Express Agency and the Alton Railroad Company.) In effect, this was not money due from Claimant to the Express Agency, but in reality it was the respondent's money. That is to say, the Carrier was entitled to the net revenue received from the Railway Express Agency for express transported over the Alton's system. Therefore, this transaction amounted to a set-off of money due from the Claimant to the Respondent.

This award should in no way be construed as a precedent for the Carrier, to withhold from an employe's salary a sum of money due a third party. Such practice would not meet the approval of this Board. But here, the money withheld from the Claimant's salary was in reality his employer's money for the reasons explained above. Various states have adequate garnishment laws for third parties to collect from the employer money due from employes' salaries. When an employe owes a third party a sum of money, that party should be forced to resort to the state's garnishment laws.

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 employe involved in this dispute are respectively carrier and employe 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 there was no violation of the agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 10th day of December, 1942.