

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

John Day Larkin, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

ILLINOIS CENTRAL RAILROAD

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Illinois Central Railroad, that:

(1) The Carrier violated the provisions of the agreement between the parties when on January 1, 1953, it unilaterally removed the duties of handling certain Railway Express Agency business from the West Monroe joint agency, causing a wage loss to the incumbent agent; and

(2) In consequence thereof the Railway Express business which was unilaterally removed from the West Monroe joint agency shall be restored as formerly; and

(3) The incumbent of the position of Agent at West Monroe, Louisiana, shall be reimbursed retroactively to the date that the change was made in the handling of express business in amount of express commissions he would have earned had the change not been made.

EMPLOYES' STATEMENT OF FACTS: An agreement bearing effective date of June 1, 1951, as to rates of pay and working conditions is in effect between the parties to this dispute, hereinafter referred to as the Telegraphers' Agreement.

A position is listed in this agreement at page 62 as follows:

"Shreveport District

"West MonroeA-O.....\$1.635 per hour"

NOTE: The initials "A-O" mean Agent-Operator. (See page 38 of Agreement.)

Prior to January 1, 1953, the agency at West Monroe, Louisiana, was a station in charge of an agent-operator, with a clerk and porter to assist him. The agent-operator was the joint agent for the Carrier and the Railway Express. He operated an express pick-up and delivery service for the patrons.

Subsequent to January 1, 1953, the Carrier ordered that all less-than-carload freight and express business be removed from West Monroe agency,

XV would be to change the meaning thereof. Commissions were not discontinued at Antioch, in its present status.

"... We find that the wording of Article XV is not ambiguous and therefore not subject to interpretation enlarging or extending its clear meaning."

In all the cases cited above, commissions were reduced (but not eliminated) because the Railway Express Agency or Western Union took back from railroad employees work to be performed by the express agency's or the telegraph company's employees. The claims in each of the awards were denied, and on the same basis the present claim should be denied.

It is not a fact, as alleged in paragraph (1) of Employees' claim, that this railroad unilaterally removed the handling of express from the joint agency at West Monroe. The express business is under the control of the Railway Express Agency, and the removal of the inbound express to the Express Agency to be handled by its own forces did not benefit the carrier in any manner, except in avoiding delay to a passenger train. This railroad has no authority to require the Railway Express Agency to return any express business to the Agent-Operator at West Monroe, as demanded in paragraph (2) of Employees' claim. Paragraph (3) of Employees' claim is lacking in merit because the express business was handled by employees of the Railway Express Agency, whose right to perform it was superior to any rights of the Agent-Operator at West Monroe, his rights being limited to such work as the Express Agency permits him to perform.

There is no basis for the claim, and it should be denied.

All data in this submission have been presented to the Employees and made a part of the question in dispute.

OPINION OF BOARD: At West Monroe, Louisiana, across the Ouachita River from Monroe, Louisiana, this Carrier has a station in charge of an Agent-Operator who is covered by the Telegraphers' Agreement. Prior to January 1, 1953, the Agent-Operator at West Monroe handled inbound and outbound express business and received commissions for such business at the rate of 10% on rail shipments and 5% on air express. His earnings on such business averaged approximately \$200 per month.

On January 1, 1953, the manner of handling the West Monroe express business was changed so that most express deliveries in that city were handled by truck directly from the Railway Express Agency in Monroe. That part of the business which was left for the Claimant, the Agent-Operator at West Monroe, amounted to commissions averaging about \$46.00 per month. The result of this change meant that Claimant's income from the express business was reduced by more than seventy-five per cent.

The Employees contend that the manner in which the Claimant's earnings were thus reduced constituted a breach of the parties' Agreement. It is claimed that such a change can be properly made only by negotiation and agreement with the Organization, and not by the Carrier acting in concert with the Railway Express Agency. This, in effect, amounted to a change in working conditions, and Rule 16 (c) provides that,

"Employees required to serve Express or Commercial Telegraph Companies shall have the right to complain of unsatisfactory treatment on the part of said Companies, and shall receive due consideration from the Carrier." (Emphasis added.)

Also, the Employees contend that this action by the Carrier is contrary to the provisions of Rule 36, and contrary to the intent and purpose of the Agreement as a whole.

"RULE 36 TERMINATING CLAUSE

"This agreement shall be effective June 1, 1951, and shall continue in effect until modified or changed in accordance with the provisions of Section 6 of the Railway Labor Act, as amended."

There is no claim here that Rule 16 (a) is involved. This provision of the Agreement applies only to the changes in percentage rates where commission earnings are involved. However, Rule 16 (b) and 16 (c), when taken together, leave the impression that the parties have a joint responsibility to deal fairly with an employee whose earnings have been substantially and adversely affected by an arbitrary arrangement between the Carrier and an Express Company.

Paragraph (b) of Rule 16 specifically provides that when "commissions are discontinued at a station, the rate of pay of the employees receiving the commissions will be subject to adjustment to conform to similar positions on the same seniority district" and "(c) Employees required to serve Express or Commercial Telegraph Companies shall have the right to complain of unsatisfactory treatment on the part of said Companies, and shall receive due consideration from the Carrier."

While in the instant case there was not a discontinuance of all commission work at the West Monroe station, there was a discontinuance of a substantial portion of that work. Claimant has undoubtedly sustained a loss of earnings not contemplated when the parties' 1951 Agreement was negotiated. And it seems obvious that the intent and purpose of the last two paragraphs of Rule 16 is to afford some protection to the employee whose earnings are thus reduced by the action of the Railway Express Agency.

There is a long list of prior awards from this Board sustaining similar claims. See Awards 97, 181, 218, 297, 313, 387, 392, 522, 528, 548, 1249, 1257, 1321, and 3408. Throughout this series of awards we have recognized that there is no obligation on the part of the Carriers or the Railway Express Agency to guarantee any particular amount of commission earnings to the Agents involved. Such Agents are expected to accept changes where the fluctuation in income is due to economic conditions, or where competition from an independent source results in a drop in commission earnings. But where the Carrier and the Express Agency initiate a change such as that involved in the instant case, we think there is both a contractual and a moral obligation on the part of the Carrier to renegotiate the rate of compensation for such employees.

The Carrier now claims that this case is identical with the one before the Board in Docket TE-6649, which was denied in Award 6798. We note in passing that the Board's opinion in Award 6798 was predicated upon the language of another Agreement and that the language there in question specifically applied to changes in the percentage rates on express commissions. The final sentence of the paragraph involved in that case stated that, "It is understood that by 'changed' is meant increased or decreased and does not refer to discontinuance where the handling is eliminated, or established where not previously handled." The claim which is presently before the Board is not based upon the language of Rule 16 (a), which applies to changes in commission rates, and which language corresponds to that involved in Award 6798. Therefore, it is incorrect to say that the claim now before us is identical with that presented in Docket TE-6649 and denied in Award 6798.

Rule 16 (b) of the parties' current Agreement provides that "when the express or telegraph commissions are discontinued at a station, the rate of pay of the employees receiving the commissions will be subject to adjustment . . ." This language does not say that such adjustment shall take place only after all commissions are discontinued. As we have noted above, a reasonable interpretation of the language of Rule 16 (b) and (c) suggests that in the event of the discontinuance of commission business, whether in its entirety or in substantial part, calls for an adjustment in the rate of pay of the em-

ployee who suffers a loss of earnings as a result of the discontinued commission earnings. No one has suggested that there was not such a loss in Claimant's case.

While we agree that some adjustment in Claimant's rate of pay may be in order, we cannot support paragraph (2) of the instant Claim. It is not for us to say that the Railway Express business must be restored to West Monroe. If the business can be more economically and efficiently handled through the Monroe Agency, that is a matter purely at the discretion of the Express Company. But the Carrier is obligated, by its agreement with the Telegraphers, to make an appropriate adjustment in pay for the employee involved. Also, this adjustment should be made retroactive to the date when the change in question was effectuated, January 1, 1953.

The record indicates that the parties have not seriously attempted to negotiate a properly adjusted rate for the Claimant. And the record is without any data upon which we could act if we were so inclined. We cannot, under the language of the parties' Agreement of 1951, order any specific rate. And certainly there is no requirement in the Agreement that we support Claimant's demand that the hourly rate be increased to the extent of the average monthly commission loss. Award 6785. Such an action on our part might introduce a gross inequity in the wage scale.

The only guide which we can suggest to the parties in resolving this matter is the one set forth by them to be followed in the event commissions are discontinued at a station. They have said that in such situations "the rate of pay of the employees receiving the commissions will be subject to adjustment to conform to similar positions on the same seniority district". The parties are in a better position than we to determine what this rate should be. Therefore, we must remand the matter to the parties for negotiation to this end.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived oral hearing thereon;

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 there is inadequate data presented by the parties to enable the Board to give a correct solution to the problem. That the parties should negotiate further, keeping in mind the suggestions contained in the above Opinion.

AWARD

Remanded for further negotiation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 10th day of January, 1957.

DISSENT TO AWARD NO. 7592, DOCKET NO. TE-7179

Award No. 7592 constitutes grave error in finding that the parties should negotiate further.

Rule 16 consists of three self-contained paragraphs. Paragraph (a) provides that no change in percentage will be made except by negotiation; para-

graph (b) provides that the rate of pay will be subject to adjustment when commissions are discontinued and paragraph (c) provides that employes may complain and shall receive due consideration in event of unsatisfactory treatment by the Express or Telegraph Companies. Each of these paragraphs is a special provision dealing with a specific subject matter and stands alone.

The majority correctly found that:

"There is no claim here that Rule 16 (a) is involved. This provision of the Agreement applies only to the change in percentage rates where commission earnings are involved."

Rule 16 (a) is the only paragraph of the rule which provides for negotiations.

The majority agree that:

"there was not a discontinuance of all commission work at the West Monroe station"

in view of which paragraph (b), which is clear and unambiguous, is not here involved any more than is paragraph (a).

The majority state that:

"we think there is both a contractual and a moral obligation on the part of the Carrier to renegotiate the rate of compensation for such employes."

The record does not support the distinction drawn by the majority between changes where the fluctuation in income is due to economic conditions as compared with changes where the Carrier and Express Agency initiate a change in operations for economic reasons. Since negotiations under Rule 16 (a) and rate of pay adjustment under Rule 16 (b) are provided for in certain specific circumstances, neither the negotiations under paragraph (a) nor the rate adjustment under paragraph (b) are involved in other circumstances in which protection to the employe is "due consideration" of his complaint, provided for in Rule 16 (c).

The interpretation which the majority here place upon Rule 16 (b) has the effect of enlarging or extending its clear meaning by bringing it into application when the facts and circumstances do not meet the contract provision where "commissions are discontinued".

Part (1) of the claim is that the Carrier violated the provisions of the Agreement between the parties when it unilaterally removed the duties of handling certain Railway Express Agency business, causing a wage loss. The majority state in their Opinion that:

"It is not for us to say that the Railway Express business must be restored to West Monroe. If the business can be more economically and efficiently handled through the Monroe Agency, that is a matter purely at the discretion of the Express Company."

Since it is not for us to say that the business must be restored to West Monroe, as there is no rule or agreement requiring its continuance or restoration, part (1) of the claim, as well as part (2) thereof, was not supported and should have been denied.

Furthermore, inasmuch as the majority found that there is no requirement in the Agreement to support claimant's demand that the hourly rate be increased to the extent of the average monthly commission loss, part (3) of the claim similarly should have been denied.

This Division is not empowered under the Railway Labor Act to deal in equity. Our functions are limited to the interpretation and application of the agreed-upon rules.

For the above reasons we dissent.

/s/ J. F. Mullen

/s/ R. M. Butler

/s/ W. H. Castle

/s/ C. P. Dugan

/s/ J. E. Kemp