Award No. 11714
Docket No. TE-10451

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David Dolnick, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Pacific Company (Pacific Lines) that:

1. Carrier violated the Agreement between the parties when it failed to compensate R. C. Williams, joint Railway-Express Agent at Selby, California, on the basis of the established L.C.L. commission rate of ten (10) percent of the express charges of $9,048.79 covering an express shipment of 432 bars of fine silver handled by the Railway Express Agency from Selby, California, to Ottawa, Canada, on November 14, 1956 and instead compensated him at the car load commission rate of $10.00; this shipment having been tendered to the Agent as a Less Carload Shipment and charges based and paid by the consignee on the L.C.L. rate.

2. Carrier shall be required to compensate R. C. Williams at the L.C.L. commission rate, 10% of the revenue charges, less the $10.00 already paid.

EMPLOYES' STATEMENT OF FACTS: The agreements between the parties are available to your Board and by this reference are made a part hereof. The instant claim is based primarily upon a special agreement between the parties governing express commission rates at Selby, which will be presented later in this submission.

Selby, California, is a station on this Carrier's lines (Western Division) with one position under the Telegraphers' Agreement classified as Agent-Telegrapher; the occupant of the position is also agent for the Railway Express Agency; in other words, a joint agent handling the work at this station for both the Southern Pacific Company and the Railway Express Agency. Such an arrangement has been in effect at numerous stations, not only on this Carrier, but on railroads all over the nation. Rule 33 of the agreement between the parties recognizes the situation and makes certain provisions therefor.

For many years the agent at Selby was paid a flat rate of $80.00 per month in lieu of express commissions. There is no record extant showing just

The carrier reserves the right, if and when it is furnished with the submission which has been or will be filed ex parte by the petitioner in this case, to make such further answer as may be necessary in relation to all allegations and claims as may be advanced by the petitioner in such submission, which cannot be forecast by the carrier at this time and have not been answered in this, the carrier's initial submission.

(Exhibits not reproduced.)

OPINION OF BOARD: The occupant of the Agent-Telegrapher position at the Selby, California, station was also agent for the Railway Express Agency. For many years prior to April 29, 1952 the Agent was paid a flat rate of $80.00 per month in lieu of commissions. On the latter date the parties agreed that effective May 1, 1952 the flat rate in lieu of commissions would be increased to $100.00 per month.

On November 8, 1956, the Carrier and Petitioner executed a letter, the material substance of which read as follows:

> "In view of changed conditions Railway Express Agency now desires to cancel arrangement reflected by our letter of April 29, 1952 and is agreeable effective November 1, 1956 to allowing commissions at rate of 10% on LCL revenue local, and 5% on LCL revenue interline, and $10.00 on carload traffic."

Shortly before November 14, 1956 the American Smelting and Refining Company advised the Claimant that they would have 432 bars of silver weighing 34,324 pounds for shipment to Ottawa, Ontario, Canada, on November 14, 1956. Claimant reported this to the Superintendent's office of the Railway Express Agency, who advised Claimant that "shipment would move in a car provided for that purpose and should be billed on a carload waybill." The shipment was so billed on a carload waybill. The total charge was $9,048.79.

Petitioner contends that the $9,048.79 charges was computed "from the LCL value rate of $19.73 per $1,000.00; therefore, the charges of $9,048.79 are LCL revenue and are subject to the 10% rate." The amount Claimant says he should have received is $904.87. The Carrier paid him $10.00.

Petitioner argues that this was not a carload shipment because "it was billed at LCL rate of $19.73 per $1,000.00 value with no C/L commodity rate on silver being authorized by tariff." Heretofore, silver had been shipped at LCL rates and on LCL waybills. The mere fact that this shipment was billed on a carload waybill does not change the situation. It is also argued that the mere fact that the shipment of silver was the only lading in the car does not alone create a carload shipment. Further, Petitioner says that there "is no car load rate in express tariffs covering this type of shipment, and reason being that it is a 'value shipment,' i.e., the rate is based upon the value, and not the weight."

The agreement of November 8, 1956 provides for compensation of "$10.00 on carload traffic." The term "carload traffic" must have had some meaning to the parties. Bothe parties are familiar with the usage of this term in the industry. While the Standard Express Operations Agreement between the Railway Express Agency, Inc., and the Railroad companies is not binding upon the Petitioner or the Claimant, the operation and term usage is known to Petitioner. Article 10, Section 2(a) of that Agreement defines "carload traffic" as follows:

"The term 'carload traffic' means (1) shipments consigned from one consignor to one consignee moving under carload rates and (2) shipments described in the Money Classification section of Official Express Classification No. 35, supplements thereto and successive issues thereof, on which the transportation charges amount to $2,500 or more, consigned from one consignor to one consignee."

Whether or not the parties intended a different meaning to "carload traffic" we do not know. The fact is that the words alone have clear and well understood meaning even without the definition above quoted. The definition clarifies the meaning and intent as it applies to the shipment of silver bars or other monetary classifications. If Petitioner intended a different meaning to "carload traffic," the agreement of November 8, 1956 should have so provided. In the absence of an accepted meaning by the parties, we may not modify the clear and normal usage of words in an agreement.

The mere fact that the shipment was billed at the LCL rate does not change the meaning of "carload traffic." The record shows that the LCL rate is the same as the rate for silver shipments of this kind.

Petitioner cites as a precedent a claim settlement made in 1946. Two hundred bags of rutabaga seed weighing 22,400 pounds were shipped in a car provided by the Carrier. It was billed at the LCL rate on a carload waybill. Carrier paid the agent the full 10% commission instead of only $10.00. The record shows that this shipment is not similar to the claim here considered. The rutabaga seed shipment moved as Second-Class. It did not come under the definition of "carload traffic" described in the Money Classification above quoted. That being the case, it could not have been considered "carload traffic" since it was not billed under "carload rates." The 1946 claim settlement is not applicable to the facts here involved and may not be considered as a binding precedent. It certainly was not a precedent which gives meaning and intent to the November 8, 1956 Agreement.

During the Panel Hearing, and subsequent thereto, the parties introduced statements, and correspondence of events which occurred subsequent to the date of the claim. These are not in the record. We have not considered them in reaching our decision. They are irrelevant. We have no right to give them any credence. They should not have been a matter of discussion or submission to the Referee.

For all the reasons previously stated, we conclude that there is no merit to the claim.

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

That the parties waived oral hearing;

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 jurisdiction over the dispute involved herein; and

That the Carrier did not violate the Agreement.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 5th day of September 1963.