

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
CHICAGO GREAT WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago Great Western Railway Company that:

1. Carrier violated and continues to violate the agreement between the parties when, because of express commissions being discontinued, it failed and refused to adjust the salary of the position of Agent at South St. Paul, Minnesota, to conform with the rate paid a similar position.

2. Carrier shall be required to adjust the rate of the position of Agent at South St. Paul, Minnesota to conform with the position of Agent at Austin, Minnesota (a similar position) to be effective May 1, 1957.

EMPLOYEES' STATEMENT OF FACTS: The agreements between the parties are available to your Board and by this reference are made a part hereof.

South St. Paul, Minnesota is a station on the Minnesota Division of this Carrier's lines and, as its name indicates, is immediately south of St. Paul, Minnesota. Prior to May 1, 1957, the Agent of the Carrier at this station was also the Agent of the Railway Express Agency handling all of the business of the Express Agency accruing to the station. Receiving, delivering, billing, accounting and all work relating thereto. For this service he, the same as other agents on this Carrier's lines, received a commission. He was allowed a commission of 10% of all LCL revenue and 5% of all carload revenue, both inbound and outbound.

When establishing rates of pay for agents' positions at stations, express commissions received at stations where the railroad agent was also the express agent were taken into consideration with a view to equalizing the overall salary as between similar stations. In order to protect the Carrier in the event an express agency was established at a station and to protect the employees in the event an express agency was discontinued at a station, a rule was negotiated by the parties providing for an adjustment of the salary

	South St. Paul	Mankato
Freight bills issued	733	742
Carloads handled	576	501
Less carload tonnage	None	26,544 lbs.
Loads interchanged	None	349
Gross revenue	\$188,655.00	\$147,325.00

* Includes \$40.00 minimum, allowed for handling express.

Agent, Mankato, does not receive express commissions and his salary is approximately \$35.00 per month less than the total compensation paid to Agent, South St. Paul. If there is any merit in the Employees' theory that an adjustment is due at South St. Paul under terms of Rule 21, the monthly rate of the Agent at that point should be decreased at least \$35.00 to more nearly conform with the rate paid the Agent, Mankato.

In view of all the foregoing, it is the Carrier's position that claim should be denied because express commissions have not been discontinued at South St. Paul and an upward adjustment is not justified under terms of Rule 21. If this Board should hold that an adjustment is required pursuant to Rule 21, this Division should hold that the compensation of the Agent, South St. Paul, should be decreased so as to conform with the rate paid a similar position, i.e., Mankato.

Carrier affirms that all data in support of its position has been presented to the other party and made a part of this particular question in dispute.

OPINION OF BOARD: Rule 21 of the Agreement states:

"Rule 21. When express or commercial telegraph commissions are discontinued or created at any office, thereby reducing or increasing the average monthly compensation paid to any position, prompt adjustment of the salary affected shall be made conforming to rates paid for similar positions."

The issue before this Board is whether express or commercial telegraph commissions were discontinued for the Agent at South St. Paul, Minnesota.

Prior to May 1, 1957, express traffic for South St. Paul and outbound express traffic from that station were handled on Trains 5 and 6 respectively at the South St. Paul Depot. Effective that date, express pickup and delivery service handled express traffic between South St. Paul and St. Paul, a distance of about five miles. In other words, in order to eliminate delay and meet trucking competition, it was arranged that inbound and outbound express traffic to and from South St. Paul would be handled at St. Paul through a pickup and delivery service. The Agent continued to "handle counter business and express shipments to consignees located beyond the corporate limits of South St. Paul".

Petitioner contends that the express agency was discontinued so that express commissions were discontinued. In reply to a letter from Petitioner's General Chairman contending that the Express Agency was discontinued, Carrier on July 13, 1957, wrote, in part, as follows:

"Apparently you have been misinformed concerning this statement, as such is erroneous and is not a fact. I have investigated with our Agent, South St. Paul, and he has received no correspondence from the Express Agency to the effect, as stated in your letter of claim; in fact, as a matter of information, his express commissions for the months of May and June were \$40.00 for each month, and he advises that he was paid by the Express Agency."

Again on October 22, 1957, Carrier wrote Petitioner, in part, as follows:

"Sole basis of claim is your allegation that effective May 1, 1957, express agency discontinued the express commissions at South St. Paul. The facts are that express commissions at that point are computed in the same manner as at other points on the property where express shipments are handled with the exception that at South St. Paul the agent is allowed a minimum of \$40.00 per month. In the circumstances, am sure you will agree that Rule 21 is not applicable and claim is, therefore, respectfully declined."

Petitioner has failed to show by a preponderance of evidence that the Express Agency at South St. Paul was discontinued. On the contrary, the record is clear that the Agent continued to handle some express business and that the Express Agency continued to pay him commissions on the same basis with a minimum of \$40.00 a month.

It is true that Claimant's earnings were reduced after May 1, 1957. Rule 21, however, does not provide that an adjustment in rates shall be made when express handling work is "reduced". The Rule applies only when commissions are "discontinued". On the basis of the record commissions were not discontinued.

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 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 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 13th day of January 1964.