

Award No. 14595
Docket No. TE-11532

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly 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 (Pacific Lines), that:

B. L. Major, Agent-Telegrapher, Fillmore, California, be paid ten (10) per cent commission on all business handled for Western Greyhound Lines, September 19, 1957 through January 13, 1958.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the parties to this dispute, effective December 1, 1944, reprinted March 1, 1951, and as amended.

At page 65 of said Agreement is listed the positions at Fillmore, California on the effective date of said agreement. The listing reads:

Fillmore — Agent-Telegrapher:	Hourly Rate
Monthly Rate — \$320.17	\$1.885
Fillmore — 2nd Telegrapher-Clerk	1.6225

On or about September 19, 1957, a representative of Western Greyhound Lines called upon the Claimant at his Fillmore Southern Pacific Agency and informed him that Western Greyhound was placing a stock of their tickets in the agency, the sale of which was to be handled by the Southern Pacific employes at Fillmore. Also, in addition to the sale of bus tickets, Southern Pacific employes were to handle baggage and other incidental duties relating to the sale of bus line tickets, including the accounting therefor, reporting to Western Greyhound the revenue received from such sales. The claimant was informed, that for such services, he was to deduct 10 percent of the gross sales, retaining 2½ percent, and remitting 7½ percent to the Auditor of Passenger Accounts, Southern Pacific Company.

Inasmuch as the Claimant had no prior notice of such an arrangement, he declined to permit Western Greyhound to place its tickets in the Fillmore Agency pending instructions from his superior officer, the Superintendent (railroad) of the Los Angeles Division.

percent commission of all business handled, account selling tickets, at the Fillmore Southern Pacific depot, for the Western Greyhound Lines, Copy of that letter is attached as Carrier's Exhibit A. By letter dated June 3, 1958, Carrier's Superintendent denied the claim. (See Carrier's Exhibit B.)

By letter dated June 19, 1958 (see Carrier's Exhibit C), petitioner's General Chairman appealed claim to Carrier's Assistant Manager of Personnel, and by letter dated September 16, 1958 (Carrier's Exhibit D), the latter denied the claim.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant was required to sell bus tickets for Western Greyhound Lines between September 19, 1957 and January 13, 1958, pursuant to an arrangement between Carrier and Western Greyhound Lines. Claimant was responsible for the handling of such bus tickets at Carrier's Fillmore Southern Pacific depot in addition to his regular duties as Agent-Telegrapher. Collateral duties included the accounting therefor and reporting to Western Greyhound the revenue received from ticket sales. Claimant was initially advised of the arrangement by a representative of Western Greyhound Lines. Oral confirmation was obtained from Carrier by Claimant, including the terms of the arrangement, but written instructions were not submitted to him until December 18, 1957.

The parties agree that Claimant was informed that he was to deduct 10 per cent of the gross ticket sales, retain 2½ per cent for his services, and remit the balance of 7½ per cent to the Auditor of Passenger Accounts, Southern Pacific Company. During the month of September, 1957, Claimant complied with his oral instructions, but thereafter, deducted 5 percent of gross revenue collected for himself through December, 1957. On January 13, 1958, Western Greyhound Lines' tickets were withdrawn from Carrier's Fillmore Agency, and subsequent to that date, no business for said Company was handled at that Agency.

Carrier sought to recover from Claimant the deductions taken by him in excess of 2½ per cent during the last quarter of 1957, which he ultimately paid under protest on April 8, 1958. Thereafter, the instant claim was filed on behalf of Claimant by Petitioner on May 15, 1958, demanding that Claimant be paid the full ten (10) per cent commission on all such ticket sales at the Fillmore Southern Pacific Depot during the entire period in question. The claim was duly processed on the property and denied by Carrier on the merits at each step of the proceedings.

The Carrier now argues for the first time that the claim is not properly before us because the alleged violation took place on September 17, 1957 and the claim was not presented within the time limits provided in Article V, Section 1(a) of the August 21, 1954 Agreement. This Board has repeatedly held that the time limitations contained in Article V, (a) and (b) are procedural in nature, and that the parties may waive procedural requirements. (Awards 11044, 11752 and 14213.) Carrier did not raise any objection to the progression of this claim on the property and made no reference to it until submission of the dispute to this Board. Therefore, Carrier will be deemed to have waived objection to consideration of the merits of the dispute.

Petitioner cites various provisions of the controlling Agreement between the parties in support of the instant claim; however, we find that only Rule 31 (c)-3 appears at all relevant to the controversy. Rule 31 (c)-3 provides as follows:

"If an employe considers himself overworked, complaint to proper officer shall be promptly considered and, if well founded, necessary relief afforded. Assignment of duties other than those usually performed by employes may be handled through their committee in accordance with the rules of this agreement."

Here, Carrier offered the services of its Agency at Fillmore to another Carrier, including the handling of tickets by Claimant, without prior consultation with and approval by either the Claimant or his representative. Claimant was called upon to perform services outside the Scope of the Agreement between the parties. An appropriate procedure would have been for Carrier to consult Claimant or his representative prior to assigning such work to Claimant in accordance with Rule 31 (c)-3.

Inasmuch as Claimant accepted the assignment and performed the necessary services, he was entitled to reasonable compensation. Apparently, there was no meeting of the minds between Carrier and Claimant with respect to proper remuneration; however, Claimant did accept the initial terms of the arrangement during September, 1957 without protest. Thereafter, he unilaterally increased his commission for services rendered without prior consultation or negotiation with Carrier. Furthermore, the instant claim was not filed until after Claimant had paid Carrier the amount withheld by him in excess of 2½ per cent of gross receipts. Thus, Claimant also could have utilized the provisions of Rule 31 (c)-3 of the controlling Agreement at the outset of the controversy or thereafter when he determined that 2½ per cent of the gross receipts was inadequate compensation for handling bus tickets in addition to his regular duties.

This Board now is requested to establish a rate of pay for the services rendered by Claimant in the amount of 10 per cent of all gross receipts from bus ticket sales. We have no authority to do so, as such action would constitute establishing rates of pay because of new duties, a function properly performed through negotiation and the mediation procedures contained in Section 6 of the Railway Labor Act, as amended. (Awards 7093, 8158 and 8201) Therefore, we are compelled to dismiss the claim without consideration of the merits of the dispute.

Accordingly, we will dismiss the Claim without prejudice.

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 Claim is dismissed without prejudice.

AWARD

Claim dismissed without prejudice.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of June 1966.