

Award No. 14630
Docket No. TE-13480

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly The Order of Railroad Telegraphers)

RAILWAY EXPRESS AGENCY, INC.

STATEMENT OF CLAIM: The General Committee of The Order of Railroad Telegraphers on the Norfolk & Western Railway presents the following claim:

1. Claim against the Railway Express Agency, Inc., on behalf of the joint agents on the Norfolk & Western Railway that the Agreement between the parties was violated and continues to be violated when on May 1, 1961 it unilaterally caused to be displaced the occupant of the joint agency at Galax, Virginia, and transferred the work, duties, jurisdiction and responsibilities pertaining to the handling of express business in connection with the operation of said joint agency, to an employee not subject to said Agreement.

2. The Railway Express Agency, Inc., shall, beginning May 1, 1961, and each and every day thereafter, or as long as the violation continues, pay to the occupant of the joint Norfolk & Western—Railway Express Agency at Galax, Virginia, the commission on express business handled at said station, as provided in said Agreement.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an agreement between the Southern Express Company Agents, who are jointly employed as railway and express agents on the Norfolk & Western Railway, effective August 1, 1917. Copy of said agreement is attached as ORT Exhibit 1. (There is also an agreement between the Norfolk & Western Railway Company and Telegraphers represented by The Order of Railroad Telegraphers governing rates of pay, rules, and working conditions, effective February 16, 1958.)

From the record it appears that the first agreement between these parties was consummated on July 1, 1909. That this agreement was revised as of June 1, 1912. The current agreement being a revision of the June 1, 1912 agreement. That the June 1, 1912 agreement was in effect on June 2, 1918, when the United States Government, through its Director General of Railroads, negotiated a Memorandum of Agreement with the four principal express

Prior commitments make it impossible for me to meet with you until the week of October 2, and if either Tuesday, October 3, or Wednesday, October 4, is satisfactory to you, please advise which of these dates is most convenient for you."

Conference was held on October 3, 1961.

On May 10, 1962, this claim was appealed to the Board by Mr. G. E. Leighty, President, the Order of Railroad Telegraphers.

OPINION OF BOARD: The main issue involved herein is whether or not Railway Express Agency, Inc. in abolishing the position of joint agent and establishing a salaried agent at the same location violated an agreement entered into in 1917 between Southern Express Company, predecessor to the Railway Express Agency, Inc. and the joint agents on the Norfolk & Western Railway.

The facts were that Norfolk & Western Railway Company maintained an agency at Galax, Virginia where the claimant employee also acted as the agent for Railway Express Agency, Inc., handling express business on a commission based on a percentage of the freight charges handled at said station. On May 1, 1961, the Express Agency abolished said work arrangement with the Joint Agent and established a salaried person directly in the employ of Railway Express Agency.

Railway Express Agency, Inc. contends (1) that the Joint Agent at Galax, Virginia wasn't one of their employees; (2) that the Joint Agents' agreement with Southern Express Company entered into in 1917, is not binding on the Express Agency; (3) that if the 1917 agreement is binding on the Express Agency, there wasn't any violation of said agreement when the Joint Agency was abolished.

The Organization's position is that the 1917 agreement governing the Southern Express Company agents joint employment as railway and express agents on the Norfolk & Western Railway is binding on the Express Agency and Organization and that Articles X and XI of said agreement were violated by the Express Agency when the duties of the joint agent as express agent were discontinued by the Express Company.

Article X of said agreement reads as follows:

"In case of vacancies on the line of the Norfolk & Western Railway, the Express Company will not discriminate against any Norfolk & Western Agent, and no Agent will be displaced without just cause."

Article XI is as follows:

"This agreement to remain in effect until thirty (30) days' notice is given in writing by either party to the other."

As was clearly set out in Awards 298, 387, 548 and 13164, this Board has jurisdiction to hear this claim.

In regard to the merits of the claim, nothing in said Article X, prohibits or restricts the Joint Agency from being abolished by the Express Company. There is no rule in the Agreement which requires the Express Agency to permanently continue the Joint Agency arrangement at Galax.

This Board does not have the power to justify a construction of an agreement to which the language is not susceptible. Further, this Board cannot add to or detract from the provisions of the Agreement. Award 10585.

As was stated in Award 8902:

"This Division has upheld the right of the Carrier to determine what positions are needed for the efficient operation of its facilities unless it expressly has limited such prerogative by their Agreement."

It is the conclusion of this Board that the Express Company did not violate the terms of the agreement and this claim will be denied.

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 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 the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June, 1966.