

Award No. 15516

Docket No. CLX-15970

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Claude S. Woody, Referee

PARTIES TO DISPUTE:

RAILWAY EXPRESS AGENCY, INC.

**LOCAL 808, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS**

STATEMENT OF CLAIM: Claim of Railway Express Agency, Inc. that

The Union Shop Agreement dated March 31, 1952, the Deduction Agreement, dated January 22, 1958, and the Local Agreement effective January 1, 1963, all of which were between Railway Express Agency, Inc. and its employees formerly represented by the International Brotherhood of Teamsters, Locals 459 and 808 were not violated when in December of 1965 Railway Express Agency, Inc. did not transmit dues for December to Local 808.

CARRIER'S STATEMENT OF FACTS: For many years the bulk of the employees of Railway Express Agency (hereinafter sometimes referred to as REA) have been represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees (hereinafter sometimes referred to as BRC). In addition, prior to December 10, 1965, the drivers in eight major cities, including New York, have been represented by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (hereinafter sometimes referred to as IBT). In the New York Metropolitan area prior to December 10, 1965, the drivers were represented by Locals 459 and 808, IBT.

On March 31, 1952, a Union Shop Agreement (Carrier's Exhibit A) was entered into between REA and its employees formerly represented by the IBT. On January 22, 1958, pursuant to the Union Shop Agreement, a Deduction Agreement (Carrier's Exhibit B) was entered into between REA and its employees in the New York Metropolitan area formerly represented by Locals 459 and 808, IBT. Paragraph 8 of the Deduction Agreement reads as follows:

"In the event of a change in representation of employees now represented by the Organization this Deduction Agreement shall be automatically terminated as of the date official notification is received from the National Mediation Board of such change in representation."

Effective January 1, 1963, a Local Agreement was entered into between REA and its employees in the New York Metropolitan area formerly represented by Locals 459 and 808, IBT.

for summary judgment were submitted to Judge Nadel on February 7, 1966. Until the court decides these motions, it is respectfully requested that NRAB withhold all action on the Carrier's claim upon the ground that a proceeding before NRAB may become moot. Should a proceeding before NRAB become necessary, then the union reserves its right to file a full submission at the appropriate time.

OPINION OF BOARD: Prior to December 10, 1965, drivers employed by Railway Express Agency in eight major cities had been represented by the Teamsters. The basic Union Shop Agreement, effective March 31, 1952, between REA and the Teamsters provided the method and procedure of making payroll deduction of union dues and forwarding of such dues to the appropriate officers of the Teamsters designated to receive such amounts.

Specifically, Paragraph 7(a) of the 1952 Agreement provided in pertinent part as follows:

"The Agency shall without cost to the **organization** periodically at such times and intervals as may be agreed upon, deduct from the wages of all employes now or hereafter employed in any work covered by the rules and working conditions agreements between the parties hereto all periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership in **such organization**, and shall pay the amount so deducted to such officer of the **organization** as the **organization** shall designate * * *" (Emphasis ours.)

Effective January 22, 1958, a formal and specific Deduction Agreement was adopted between the parties to the effect (1) that deductions would only be made from wages earned in the second payroll period of each month and that any excess or shortage in said deductions for an individual employe would be adjusted by the Local Union and the individual employe; (2) that a change of representation would automatically terminate the Deduction Agreement as of the date official notification of such change in representation was received; and (3) that the Deduction Agreement would be considered automatically cancelled if and when the Union Shop Agreement of March 31, 1952, became unlawful or invalid.

In December 1965 the second payroll period ended on December 12 and, consistent with long-established practice in New York, computation of the wages due for the second payroll period commenced on Monday following the end of this payroll period, final payroll and the preparation of checks not being completed until the close of business on December 16, with checks being distributed on Friday, December 17.

In the meanwhile, and in conformance with provisions of Section 2, Ninth, of the Railway Labor Act, the National Mediation Board has conducted a representation election to determine the labor organization to be certified as the bargaining agent to represent the class or craft whose dues are involved herein. On December 10, 1965, the National Mediation Board issued its certification, finding that the Teamsters had lost the representation election and that henceforth REA was required by law to recognize The Brotherhood of Railway Clerks as representative of those employes formerly represented by the Teamsters on this property. By such certification the Clerks became successors in interest to the Agreements theretofore extant and, pursuant thereto, waived the payment of December dues.

In preparing the payroll checks for the second payroll period of the month REA had deducted dues but, because the authority for making the deductions in behalf of the Teamsters had earlier terminated and the Clerks' Organization waived the monthly dues for December, the money was later refunded to the employees.

The Teamsters claim that the deductions for union dues should be paid over to it and not returned to the employees. REA disagrees on the ground that it has no authority to do so, and has submitted the dispute to this Board for resolution of the dispute.

We have reviewed the record and the Agreements and find that the Carrier's un rebutted contention, as embodied in the Statement of Claim above, that it was not required to remit dues to the Teamsters is correct.

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 the Agreement was not violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of April 1967.