

Award No. 16076
Docket No. TE-14700

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

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

RAILWAY EXPRESS AGENCY, INC.

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Railway Express Company, Inc., that:

1. The Railway Express Company, Incorporated (or its successor) violated Article XI-Joint Agencies of the Agreement, when it separated and discontinued the handling of the shipments made by the Georgia Shoe Company, Flowery Branch, Georgia, from the Joint Railway Express Company Agency at Flowery Branch, Georgia, effective Tuesday, October 23, 1962, without reason to or conference between the parties hereto or their designated representatives.
2. The Railway Express Company, Incorporated (or its successor) shall restore to the Joint Agency Flowery Branch, Georgia, the shipments of express made by the Georgia Shoe Company from Flowery Branch, Georgia, and allow these shipments to be handled, waybilled, forwarded from Flowery Branch, Georgia, Joint Agency.
3. The Railway Express Company, Incorporated (or its successor) shall compensate Joint Agent H. M. Hunsucker, Flowery Branch, Georgia, for all commissions due under Article II-Commissions, of the Agreement, on the total express transportation charges forwarded on less-car-load shipments originating and shipped from Flowery Branch, Georgia, by the Georgia Shoe Company of Flowery Branch, Georgia, subsequent to Tuesday, October 23, 1962.
4. The Railway Express Company, Incorporated (or its successor) shall permit a joint check of the agency at Flowery Branch, Georgia, and of all shipments made by the Georgia Shoe Company from Flowery Branch, Georgia since Tuesday, October 23, 1962, for the purpose of determining the amount of commission due joint Agent H. M. Hunsucker, Flowery Branch, Georgia.

EMPLOYEES' STATEMENT OF FACTS: At Flowery Branch, Georgia, the position of joint agent was a Railway Express agency as well as an agency of the Southern Railway and is held by Henry M. Hunsucker. Mr. Hunsucker

Mr. Hunsucker does not in any way handle this traffic and has nothing to do with it. All the work in connection with this traffic is performed by REA employes. Anything Mr. Hunsucker has to do with railroad cars he does in his capacity as a railroad employe and not as an express agent. Since commission agents are entitled to receive commission only on business originating at or destined to their offices which they handle, and since the traffic in question here originates within the limits of the Gainesville office and is handled solely by Gainesville employes, Mr. Hunsucker is not entitled to the commission claimed.

In view of the above facts I sustain decision of Superintendent Sowell declining the claim."

On September 25, 1963, General Manager Ridlehoover conferred with Mr. Watson and advised him that the joint agency at Flowery Branch would be separated and an exclusive agency established as this would be an even more efficient method of handling the large volume of Georgia Shoe traffic than the previous method employed which was handling the traffic through the Gainesville office by extending the pickup and delivery limits of Gainesville to include the Georgia Shoe Company. On September 27, 1963, General Manager Ridlehoover wrote to Mr. Watson confirming their conference:

"This will confirm conference in your office Wednesday, September 25, 1963 at which time I advised you we would separate the joint agency at Flowery Branch, Georgia, on October 15, 1963.

Our business has increased tremendously from the Flowery Branch area during the past several months because of incentive rates we have established and traffic surveys conducted by shippers. Exclusive representation as we propose to establish in lieu of the joint arrangement is essential to meet service requirements and otherwise care for the business to meet customer needs.

In addition to keeping you informed of such matters, our conference was, and this notice is given you, in accordance with Article XI of the Agreement between Railway Express Agency and The Order of Railroad Telegraphers, dated August 1, 1946."

On October 2, 1963, Mr. Watson wrote to General Manager Ridlehoover acknowledging his letter of September 16, 1963.

On November 22, 1963, the claim was appealed to the Board by Mr. G. E. Leighty, President of The Order of Railroad Telegraphers.

OPINION OF BOARD: H. M. Hunsucker was Joint Agent for the Southern Railroad Company and the Railway Express Agency, Inc. at Flowery Branch, Georgia. At this location, the Georgia Shoe Company operated a manufacturing plant, but it shipped shoes largely by truck. The shoe company was persuaded to change its method of shipment to express beginning October 23, 1962, contingent upon the Express Agency's ability to handle the traffic by that date.

The initial plan was to have Mr. Hunsucker arrange for the Flowery Branch agency to provide pick up and delivery service from the Georgia Shoe Company. After reconsideration, it was decided to extend the pick up and delivery service of the Gainesville, Georgia office, a full time agency staffed by salaried personnel, to include the Georgia Shoe Company.

Claim is made in behalf of Joint Agent Hunsucker at Flowery Branch, Georgia, that Carrier violated Article XI and the intent of the Agreement when it permitted the Gainesville, Georgia office of the Railway Express Agency to handle the business that originated at Flowery Branch, Georgia, and thus deprived him of commissions to which he was entitled. It takes the position that since Mr. Hunsucker solicited the business, even incurred some expenses in securing it, and since traditionally the Flowery Branch office handled all business originating or terminating from the various patrons around that location, the business from the Georgia Shoe Company should be restored to the Flowery Branch office for handling.

Carrier's contention that the Board lacks jurisdiction is without merit. See Awards 298, 548, 13164, 14580 and 14630.

Article XI, provides as follows:

"Joint railway-express agencies shall not be established, separated or discontinued without reasonable notice to and conference between the parties hereto or their designated representatives, when full information shall be given as to the occasion for changing existing conditions at the agency or agencies involved."

Other than these conditions, the Rule does not prohibit or restrict Carrier from operating or discontinuing the handling of traffic from a joint express agency. Moreover, this Article does not require agreement of the parties on the changes. In the interest of efficient and economical operation of its business, Carrier chose the Gainesville agency rather than the joint agency at Flowery Branch to handle the shipments of the Georgia Shoe Company. Petitioner has not shown that the joint agent at Flowery Branch had the exclusive right under the contract or by custom, practice, or tradition to handle the work in question. Although Mr. Hunsucker may have been disappointed in losing commissions he anticipated, the Agreement does not insure that an agent at a joint agency will have stated amount of business. In addition, the record does not give evidence that Carrier arbitrarily made the change to deprive Agent Hunsucker of his commissions. Since the Agreement was not violated, the claim is denied.

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 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 1st day of February 1968.

Keenan Printing Co., Chicago, Ill.

Printed in U.S.A.