



Award No. 16078
Docket No. TE-14727

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 Agency, Inc., that:

1. The Railway Express Agency, Inc. (or its successor) violated Article XI of the Agreement when it discontinued this joint railway express agency at Belton, South Carolina, effective March 2, 1962, without reasonable notice to or conference between the parties hereto or their designated representatives.
2. The Railway Express Agency, Inc. (or its successor) shall restore the joint agency at Belton, South Carolina and compensate Agent O. D. Hutchinson, or his successor, for all commissions due under Article II of the Agreement on the total express transportation charges, both received and forwarded on less carload (LCL) shipments originating or terminating at Belton, South Carolina since March 2, 1962.
3. The Railway Express Agency, Inc. (or its successor) shall permit a joint check of the agency at Belton, South Carolina and shall give full information on existing conditions to the designated representatives of The Order of Railroad Telegraphers.
4. The Railway Express Agency, Inc. (or its successor) failed to proceed as provided in the Agreement between the parties or the Railway Labor Act by attempting to modify the Agreement of August 1, 1946, by individual contract with the agent at Belton, South Carolina.

EMPLOYEES' STATEMENT OF FACTS: At Belton, South Carolina, there was a joint agency for the Southern Railway as well as Railway Express. The position was held by Joint Agent O. D. Hutchinson. By letter of March 1, 1962, Superintendent McVay notified General Chairman Watson that by authority of the South Carolina Public Service Commission he was closing the joint office at Belton, effective March 2. See ORT Exhibit 1.

consolidation. In addition, the statements made to Division Supervisor Stewart on March 2, 1962 by Agent Hutchinson indicate that he had previously notified you of the contemplated consolidation and the reasons for changing the existing conditions.

Furthermore, on July 2, 1962, conference was held between you and Superintendent Dyer. At that time, you were formally given full information concerning the reasons for changing existing conditions at Belton. The claimant for the period March 2, 1962 to July 2, 1962, is former Agent Hutchinson. However, because of his statements upon which Railway Express Agency relied, he is precluded from asserting any violation, and under no circumstances would be entitled to any reparations.

Accordingly, I must advise you that after full consideration of this matter, I must sustain Superintendent Dyer's decision, and deny the claim. I would point out that under no circumstances would the concurrence of the Order of Railroad Telegraphers be required to make this type of change and, further, that the rights of former Agent Hutchinson were in no way prejudiced."

Approximately six months later, on August 23, 1963, Mr. Watson wrote to General Manager Riddlehoover, stating that his declination of the claim was unacceptable. Some three and one-half months later, the claim was appealed to the Board by Mr. G. E. Leighty, President of the Order of Railroad Telegraphers.

OPINION OF BOARD: On March 2, 1962, a joint agency for the Southern Railway Company and the Railway Express Agency, Inc. at Belton, South Carolina, was discontinued. The Order of Railroad Telegraphers in behalf of Joint Agent O. D. Hutchinson, contends that the discontinuance of the agency was made without reasonable notice or conference between the parties in violation of Article XI of the controlling Agreement. It requests restoration of the joint agency and compensation for the commissions the Agent would have received if the agency had not been discontinued.

Carrier urges that in view of the fact that it discussed the question of the agency discontinuance with Agent Hutchinson, and that he concurred in its decision to eliminate the agency, it complied with the requirements of Article XI. It maintains that there is nothing in the Agreement which prohibits it from discontinuing an agency in order to conduct its business with greater efficiency and economy.

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

With reference to the question of whether the closing of the joint agency was made after reasonable notice in accordance with Article XI, the record shows that the General Chairman received a letter dated March 1, 1962, in which he was advised that the joint office at Belton, South Carolina, was to be closed effective March 2, 1962, a one-day notice. Prior discussions with Agent Hutchinson during which that employee indicated he favored the discontinuance of the agency because he could not handle the volume of traffic and was not interested in establishing pick up and deliv-

ery service at Belton, did not constitute "reasonable notice to and conference between the parties hereto or their designated representative . . ." since Mr. Hutchinson was not the designated representative of the Order of Railroad Telegraphers. Moreover, one day notice is too precipitate action to be considered reasonable. When a conference was finally held on July 2, 1962, in which the General Chairman and the Superintendent of the Express Agency represented the parties, there was compliance with Article XI.

For the reasons stated, we hold that the claim in paragraph 1 is sustained and compensation requested in paragraph 2 is allowed only for the period between March 2, 1962 and July 2, 1962, the date Carrier complied with Article XI. Since the Agreement does not restrict or prohibit Carrier from discontinuing a joint agency, the request for restoration of the agency at Belton and for a joint check made in paragraphs 2 and 3 is denied, as is paragraph 4.

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 violated to the extent indicated in the Opinion.

AWARD

Claim sustained in part and denied in part in accordance with Opinion and Findings.

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.