

Award No. 16080
Docket No. TE-15880

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 Transportation-Communication Employees Union (formerly The Order of Railroad Telegraphers) on the Railway Express Company, Incorporated, 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 Anniston Ordnance (Army) Depot at Bynum, Alabama, from the Joint Railway Express Company Agency at Bynum, Alabama, effective Monday, December 3, 1962, without reasonable to (sic) 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 Bynum, Alabama, the shipments of express made by the Anniston Ordnance Army Depot from Bynum, Alabama, and allow these shipments to be handled, forwarded and waybilled from Bynum, Alabama, Joint Agency.
3. The Railway Express Company, Incorporated (or its successor) shall compensate Joint Agent F. L. Wycoff, Bynum, Alabama, for all commissions due under Article II-Commissions, of the Agreement, on the total express transportation charges forwarded on less-carload and carload shipments originating and shipped from Bynum, Alabama, by the Anniston Ordnance Army Depot, subsequent to Monday, December 3, 1962.
4. The Railway Express Company, Incorporated (or its successor) shall permit a joint check of the Agency at Bynum, Alabama, and of all shipments made by the Anniston Ordnance Army Depot from Bynum, Alabama, since Monday, December 3, 1962, for the purpose of determining the amount of commission due Joint Agent F. L. Wycoff, Bynum, Alabama.
5. The Railway Express Company, Incorporated (or its successor) shall, in the event Joint Agent F. L. Wycoff, Bynum, Alabama, for any

reason, in the future, leave the position of Joint Agent Bynum, Alabama, then his successor to that agency will be compensated as is set forth in paragraph (3) above.

EMPLOYEES' STATEMENT OF FACTS: Prior to December 3, 1962, shipments made by the Anniston Ordnance Army Depot, Bynum, Alabama, were handled, including the waybilling, loading and forwarding, by Joint Agent F. L. Wycoff at Bynum, Alabama. For handling such shipments, Agent Wycoff was compensated by the payment of a commission as provided for in the Agreement.

Without conference or agreement between the parties to the Agreement of August 1, 1946 between the REA and this Organization, the Railway Express Company, Inc. (or its successor) did separate and discontinue the handling, waybilling, loading and forwarding of the shipments of express from the Anniston Ordnance Army Depot, Bynum, Alabama, from the joint agency at Bynum, Alabama. Subsequent to Monday, December 3, 1962, it required the transporting, handling and forwarding from the Express Agency at Anniston, Alabama, a distance of approximately ten miles from Bynum, Alabama.

Claim was filed in behalf of Agent Wycoff for the violation of the Agreement by the unilateral removing of the shipments by the Anniston Ordnance Army Depot at Bynum, Alabama beginning Monday, December 3, 1962. The claim was appealed to the highest officer designated to handle the claim and declined by him. The claim is now properly before your Board for final adjudication.

CARRIER'S STATEMENT OF FACTS: The Southern Railway maintains a small wayside depot at Bynum, Alabama, where it employs an agent-operator subject to the Agreement between the Railway and its employees represented by the Transportation-Communication Employees Union, hereinafter sometimes referred to as the TCU. The Railway's employee, in addition to performing his railroad duties, formerly served as the agent of Railway Express Agency, hereinafter sometimes referred to as REA, in the conduct of the express business at that point. He was referred to as a joint agent and was compensated on a commission basis, i.e., he received a percentage of Railway Express Agency's charges on shipments which he handled. The arrangement whereby employees of the various railroads serve jointly as agents of Railway Express Agency, at points where it is not represented by salaried employees or other exclusive representatives, has existed for many years throughout the United States.

The Anniston Army Ordnance Depot is a very important military installation which is located in Bynum, Alabama. Prior to December 3, 1962, the Army Ordnance Depot was not provided with pickup and delivery service as this was not furnished to the area by the Bynum agency. The Ordnance Depot was required to load all its traffic moving through Bynum into its own motor trucks, take it to the agency, and then unload it. This traffic was forwarded in two passing trains. Southern 11 was scheduled at 12:12 A. M. and Southern 12 at 12:50 A. M. The Bynum office was closed at night and REA provided messenger service in both directions on Southern 11 and Southern 12. These messengers would place the inbound traffic in the warehouse at Bynum and remove the outbound traffic.

When heavy shipments were tendered by the Ordnance Depot, the agent at Bynum was expected to give advance information of this fact to REA and

was necessary that we improve our service to this military installation, as well as at all other armed forces installations. Therefore, effective December 3, 1962, the Anniston Army Ordnance Depot was taken into the pickup and delivery limits of Anniston, Alabama, which has provided this military installation with the type service they need and meets their demands in every way.

In view of this I again reiterate declination of this claim as set forth in mine of March 21 to you."

Subsequently, on March 1, 1965, because of inadequate revenue, the joint agency at Bynum was closed in accordance with the provisions of the Agreement.

On August 13, 1965, almost 2½ years after final declination on the property, the claim was appealed to the Board by Mr. G. E. Leighty, President of the Transportation-Communication Employees Union.

OPINION OF BOARD: This dispute arose when a major part of the express business from the joint Railway Express Agency at Bynum, Alabama was removed and reassigned to an agency at Anniston, Alabama. Before December 3, 1962, shipments made by the Anniston ordnance army depot were handled by the joint agent, F. L. Wycoff, at Bynum, Alabama. After that date the express agency at Anniston, about ten miles from Bynum, extended its pick up and delivery limits of three miles to include the Anniston ordnance depot.

The Organization makes claim in behalf of Agent Wycoff for violation of the Agreement, particularly Article XI. It takes the position that the discontinuing of the handling of the shipments made by the Anniston ordnance depot from the joint agency at Bynum was a unilateral action which deprived the agent of commissions to which he was entitled. It asked for restoration of this business to Bynum and payment of all commissions which agent Wycoff lost.

Article XI reads 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."

The record shows that complaints from the army ordnance depot was the significant factor in the decision to handle the traffic through the Anniston agency rather than the Bynum agency. Before the decision to make this change in handling the traffic was made, representatives of the parties had conferences during which reasons for the discontinuing of the handling of shipments were reviewed. Except to the extent stated therein, Article XI of the Agreement does not place prohibitions or restrictions upon the Express Agency in the rearranging its method of handling traffic. Thus Carrier was within its rights in removing the express business from the agency at Bynum to bring more satisfactory service to the ordnance depot.

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

For the foregoing reasons we hold the Agreement was not violated.

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 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.