Award Number 395
Docket Number TE-327

NATIONAL RAILROAD ADJUSTMENT BOARD
Third Division

I. L. Sharfman, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

STATEMENT OF CLAIM.—

"Claim of the General Committee of The Order of Railroad Telegraphers, on the Southern Pacific Company (Pacific Lines), that Harry Sharpe be compensated under the provisions of Rule 10 of the Telegraphers' Agreement, for services rendered at Flanigan, Nevada and while en route thereto and therefrom, 8:00 P. M., April 7th, 1935, to 12:30 P. M., April 9th, 1935, inclusive."

STATEMENT OF FACTS.—The employees submitted ex parte the following Statement of Facts:

"As a result of a slide on the Western Pacific, telegraph office was opened on the Southern Pacific at Flanigan, Nevada, to handle detoured trains. Extra Telegrapher Sharpe was called for this service to leave Sparks 8:00 P. M., April 7th, 1935, arrived Flanigan 12:50 A. M., April 8th, on duty at Flanigan from 12:50 A. M. to 9:40 A. M., April 8th. Telegrapher Sharpe was then instructed by dispatcher to close the office and deadhead Flanigan to Wendel on Western Pacific Extra 206 East. He left Flanigan 9:40 A. M., April 8th, arrived Wendel 10:50 A. M., April 8th and was advised to deadhead Wendel to Sparks the same day on a stock extra. Stock extra failed to materialize and Telegrapher Sharpe was deadheaded Wendel to Sparks on No. 555, leaving Wendel 7:00 A. M. April 9th, arriving Sparks 12:30 P. M., April 9th."

The carrier's Statement of Facts was incorporated in the statement of its position as set forth below.

An agreement between the parties bearing effective date of September 1, 1927 (Wage Sale effective May 1, 1927), was placed in evidence, and the specific rules cited as bearing upon the disposition of the dispute were as set forth below in the positions of the parties.

POSITION OF EMPLOYEES.—The contentions of the employes were submitted as follows:

"This claim is filed under Rule 10 of the agreement in effect between the Southern Pacific Company and The Order of Railroad Telegraphers:

"'RULE 10

"'EMERGENCY SERVICE

"'(a) Regular telegraphers taken from their assigned positions to be used at derailments, wash-outs, or similar emergency offices, will receive salary of regular position, but in no case less than .8175 cents per hour. Extra telegraphers when used in similar service will receive .8175 cents per hour.

"'(b) Nine (9) consecutive hours including a meal hour will constitute a day's work in such service. The company will provide shelter, board, and lodging without charge.

"'(c) Time going to and from scene of emergency to be included in service for day in which deadheading is performed; but in no case will telegraphers receive less than one day's pay within each twenty-four hour period while so engaged.'

porary emergency office is established at said station 'A' (said office would, of course, come within the provisions of Rule 10); now assume that as a result of congestion of traffic and/or other abnormal conditions which are influenced by reason of the washout at station 'A' it is necessary for the Carrier to establish a temporary office at station 'R,' 100 miles distant from station 'A,' and another at station 'V,' 125 miles distant from station 'A,' Petitioner's theory is that Rule 10 applies at Stations 'R' and 'V.' Such reasoning penetrates the realm of fallacy; however, in this case and claim the Petitioner goes further and holds that because the Carrier found it necessary to augment its telegraph force and establish a temporary telegraph office at Flanigan, due to increased traffic over the Carrier's rails that the Carrier must apply Rule 10 because it acquired the increased business as a result of the misfortune of a foreign railroad whose line was blocked by slides; such reasoning passes beyond the realm of fallacy and rests in the uncharted sea of absurdities.

"Unless Petitioner amends the claim by asking leave to correct the erroneous date as referred to on pages 1 and 2 of this brief, Carrier requests the Board to dismiss the case on the grounds that there is no cause for action, hence the Board cannot assume jurisdiction.

"If Petitioner moves to correct the date and is permitted to do so, then the Carrier requests the Board to deny the claim on the following grounds:

"1st. That Telegrapher Sharpe was not used at a derailment, washout, or similar emergency office.

"2nd. That there was no derailment, washout, or similar interruption to traffic on the Carrier's lines at or near Flanigan.

"3rd. That Rule 10 of Telegraphers' current Agreement is not applicable.

"4th. That Telegrapher Sharpe has been correctly compensated in accordance with provisions of Telegraphers' Agreement by reason of the adjustment made as reflected by Carrier's Exhibit 'U.'"

The erroneous date, an obvious clerical error, which appeared in the notice of intention to file claim, was appropriately corrected when the claim was actually filed.

OPINION OF BOARD.—The questions involved in this dispute are, first, whether Rule 10 of the Agreement is applicable to the circumstances disclosed of record, and, second, whether payment should properly be computed on a continuous time basis under these circumstances. On both issues the contentions of the employes appear to be fully justified.

There is no denial that the office at Flanigan was an emergency office, nor that slides, which are obviously similar to derailments and washouts, were the effective cause of its establishment. The carrier contends that since these slides took place on the Western Pacific, and since there was no interruption of traffic on its own lines, Rule 10 becomes inapplicable. No requirements as to the locus of the slides or as to interruptions of traffic are stipulated in the rule as conditions of its applicability. The essential element, which provides opportunity for the service and compensation at issue, is the emergency office. This office was located on the lines of the Southern Pacific Company, and the rules of the agreement govern its operation. Nor is there merit to the contention that the office must be located at the exact point of the derailment, washout, or similar difficulty. It has been soundly held by this Division that the practical demands of the situation must govern with respect to the place chosen for emergency operations; and since the office here involved was located at the nearest junction point at which the Western Pacific trains might be detoured and emergency telegraph service was required, the causal connection between the slides and the emergency office was not broken in any way.

And where, as here, Rule 10 is applicable, the computation of payment on a continuous time basis is supported, not only by the language of the rule but by the carrier's own practice in effecting settlements on other occasions. The carrier seeks to differentiate this claim from those involved in the previous settlements cited in the record because in those cases the deadheading was uninterrupted whereas here there was a stop-over at Wendel. This differentiation cannot be accepted as controlling. Since the stop-over at Wendel was the result of the Carrier's own instructions, which were meticulously followed by the claimant, there is no justification for shifting its burdens to the employe.

The validity of claims of this character must necessarily be governed by the distinctive circumstances of each case, but there is nothing in the circumstances

here disclosed which detract from the propriety of the request that the claimant be compensated on a continuous time basis under Rule 10 of the Agreement.

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 employe involved in this dispute are respectively carrier and employe 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 Rule 10 of the Agreement is applicable to the circumstances disclosed of record and that payment should properly be computed on a continuous time basis under these circumstances.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: H. A. JOHNSON
Secretary

Dated at Chicago, Illinois, this 2nd day of March, 1937.