

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Herbert B. Rudolph, 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 Telegrapher A. C. Shearer be compensated under the provisions of Rule 10 of the Telegraphers' Agreement, for service performed at Carpinteria, California and while enroute thereto and therefrom 3:00 P. M., March 4th to 7:00 P. M., March 19th, inclusive, 1938."

EMPLOYES' STATEMENT OF FACTS: "Due to heavy storm and flood conditions resulting in slides, washouts and damaged trackage, Telegrapher A. C. Shearer was ordered to Carpinteria, Los Angeles Division, on March 4th, 1938 to begin service as telegrapher at Carpinteria, 12:01 A. M., March 5th, 1938.

"Carpinteria is located on the Ventura Subdivision of the Los Angeles Division at M. P. 381.2. Normally Carpinteria is manned by an agent-telegrapher but in this emergency condition, an additional telegrapher was used 12:01 A. M. to 8:00 A. M.

"Traffic through Carpinteria is operated on single track. The first 24-hour office open east of Carpinteria is Ventura, a distance of 17 miles. The first telegraph office open for the 24-hour period to the west of Carpinteria is Santa Barbara Yard Office, a distance of 19.3 miles. Summerland, the point named in EXHIBIT 'M,' shown on the map in EXHIBIT 'M' and photograph reproduction in EXHIBIT 'P' and mentioned in EXHIBIT 'R,' is located 5 miles west of Carpinteria. Montalvo, point mentioned in EXHIBIT 'M,' shown on photographic reproduction of map in EXHIBIT 'M,' photographic reproduction in EXHIBIT 'P,' mentioned in EXHIBITS 'N,' 'O' and 'R,' is located 22 miles east of Carpinteria. Hewitt, mentioned in EXHIBIT 'M,' shown on map reproduction in EXHIBIT 'M,' mentioned in EXHIBIT 'R,' is located at M. P. 458.4, a distance of 77.2 miles east of Carpinteria.

"We quote from EXHIBITS 'M,' 'N,' 'O,' 'P' and 'R,' excerpts which will give ready reference to factual material as to emergency conditions obtaining:

"EXHIBIT 'M,' photographic reproduction of map—

'Summerland: Slides in area along ocean shore.'

'Montalvo: Bridge piers weakened; two out of line several inches and settled half inch.'

'Hewitt: 45 feet of trestle washed out.'

"Mr. A. C. Shearer, temporary 3rd telegrapher, hours 12:01 A.M. to 8:00 A.M., performed similar functions in the same office and with the same facilities as utilized by the regular Agent-first trick telegrapher, between 8:00 A.M. and 4:00 P.M. This in itself should demonstrate that it was not an emergency OFFICE.

"The following, in part, from National Railroad Adjustment Board, Third Division, Award No. 923, with a similar—although not the identical rule—before it, in our opinion, sustains our position:

"* * *, such addition of a shift at an open station does not thereby create an "emergency office"; we do not, however, perceive any particular facts and circumstances in this case which would justify us in holding that the establishment of the extra tricks at these stations made "emergency offices" of them."

"We wish to emphasize that no washout existed at or in the vicinity of Carpinteria during any of the 13 days that Mr. Shearer was employed at Carpinteria.

"As Agreement Rule 10 quite specifically states 'at' and does not state 'by reason of'—'on account of' washouts, etc., and there being no washout at Carpinteria during the time that Mr. Shearer was employed at that station, and furthermore, as his service was not at an emergency office but was actually on an additional trick at an already existing station and office, we respectfully urge that the alleged claim is not supported by the rule upon which the Petitioner relies or any other rule and should be declined."

OPINION OF BOARD: The facts disclose that on March 2, 1938, floods caused serious trouble on the Carrier's lines of railroad in the general vicinity of Carpinteria, California. Carpinteria station had an agent-telegrapher and on March 5, due to conditions caused by the floods, two temporary additional telegrapher positions were established at this station. Claimant occupied one of these positions and is now claiming compensation under Rule 10 of the agreement which is, as follows:

"(a) Regular telegraphers taken from their assigned positions to be used at derailments, washouts, 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."

The question presented is whether the work claimant performed at Carpinteria constituted work at an emergency office within the meaning of Rule 10.

The Carrier takes the position first, that the facts disclose that claimant was simply assigned to an extra trick at an open station, and, under the rule announced in Award No. 923, cannot claim compensation under Rule 10. Award No. 923 simply held that under the facts there presented the establishment of extra shifts at Ponca City and Garber, Oklahoma, did not create "emergency offices." It was said in that award "we do not, however, perceive any particular facts and circumstances in this case which would justify us in holding that the establishment of the extra tricks at these stations made 'emergency offices' of them"; clearly implying that "facts and circum-

stances" might create an "emergency office" at an open station when extra tricks are added. Certainly reason will not justify an arbitrary holding that simply because a station has an agent-telegrapher, there might not be established at that station an emergency office within the meaning of Rule 10. We are of the opinion, therefore, that we must look to the "facts and circumstances" as disclosed by this particular record and determine whether the establishment of the extra tricks at Carpinteria created "emergency offices" within the meaning of Rule 10.

This same Rule 10 had the consideration of this Board in Award No. 395 and it was there held that the rule does not require that an emergency office "be located at the exact point of the derailment, washout or similar difficulty." We think this holding is sound, and disposes of the Carrier's contention to the contrary.

The facts disclose that along the Carrier's line which ran through Carpinteria serious trouble was caused by washouts, landslides, and loss of bridges. It is true that at the time claimant reported for duty traffic had been restored on this line and trains were being detoured over this line from other sections of the line and from the Union Pacific Railroad. But the fact remains that an emergent and serious condition still existed on the coast line which required the services of the claimant, and that this condition was due to the floods of the preceding days. There is a direct causal connection between the floods and the establishment of the extra tricks at Carpinteria. We are of the opinion, therefore, that under the facts and circumstances here presented the establishment of these extra tricks constituted emergency offices within the meaning of Rule 10, and that claimant should be compensated accordingly.

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 employee involved in this dispute are respectively carrier and employee 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 claimant's work at Carpinteria was work at an emergency office within the meaning of Rule 10.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 10th day of January, 1941.

Dissent to Award 1322 (Docket TE-1297)

Rule 10—Emergency Service, the sole rule involved in this Award, also in Award 1323 (Docket TE-1298), is obviously confined by plain and unambiguous language to the occurrence requiring the use of telegraphers "* * * at derailments, washouts and similar emergency * * *", and cannot properly be interpreted to extend by "causal connection" to periods following

an emergency during which the Carrier elects to provide additional telegraph service in order to expedite train movements. To interpret the purpose and plain meaning of the rule otherwise, as instanced by the majority opinion in this Award, recognizes a wide realm of facts and circumstances oftentimes following an emergent condition never intended to be cognizable and controlling in application of the rule.

(S) R. H. Allison
(S) C. C. Cook
(S) A. H. Jones
(S) C. P. Dugan
(S) R. F. Ray