

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Elwyn R. Shaw, 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 J. M. Gordon be compensated under Rule 10 of the agreement in effect, for services performed at Vincent, San Joaquin Division, March 14th to 30th inclusive, 1938."

EMPLOYES' STATEMENT OF FACTS: "On account of flood conditions as shown in EXHIBITS 'E' to 'M,' inclusive, Telegrapher Gordon performed service as outlined in the Statement of Claim and as itemized in EXHIBIT 'A.'"

"In EXHIBIT 'E,' we have underscored the points of trouble area pertinent to this claim.

Vincent to Ravenna 8.5 miles
Vincent to Lang 16.9 miles
Soledad Canyon is between Ravenna and Lang.

"The railroad crosses the Santa Clara River several times between Ravenna and Lang.

"Vincent is located in close proximity to the trouble area.

"We quote and comment upon some of the pertinent paragraphs in EXHIBITS 'E' to 'M,' which are photo-offset reproductions from Southern Pacific Bulletin, Volume 22, Number 4 (see bottom of EXHIBIT 'F'):

"EXHIBIT 'F':

'Caliente and Tehachapi creeks rising rapidly . . . slide starting in cut at Tunnel 12 near Marcel in Tehachapi mountain . . . Tehachapi westbound main track washing out . . . rains of cloudburst proportions falling . . . signal line washed out between Ravenna and Lang . . . gangs having difficulty in keeping debris away from bridges in Soledad Canyon; if water continues to rise cannot keep from losing bridges . . . all openings of Santa Clara River running full . . . all wires down between Bakersfield and Los Angeles . . . two thousand feet of track at second crossing of Santa Clara River near Russ completely washed out; first crossing dangerous, liable to go tonight . . . 400 feet of track west side of Tunnel 17½ hanging in mid-air . . . 3,000 feet of track one mile below Ravenna ready to fall in, will be gone before night is over.'

"Caliente Creek is approximately 90 miles north of Lang, Tehachapi Creek about 60 miles north of Lang, Marcel about 80 miles north of Lang.

ever, 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,'

and denied the claim.

"As to the claim for nine (9) hours' pay for each day that Mr. Gordon worked at Vincent. The Carrier is unable to determine any basis for such request. Even if Rule 10 was applicable—which it was not—it would not support the claim. That rule provides 'nine (9) consecutive hours including a meal hour will constitute a day's work in such service'; in other words, it contemplates that in such an emergency position, a telegrapher may have a meal period of one hour, which would necessitate that his assignment be over a spread of nine (9) hours so as to enable him to actually render eight (8) hours' service. Mr. Gordon was assigned to and did work an eight (8) hour day, as is the practice at stations where three (3) consecutive shifts are worked to cover the twenty-four (24) hours of the day. Under the agreement, employe does not take a meal period and so prolong his hours, which would probably overlap the hours of one of the other telegraphers, but eats his meal during on-duty hours; this in accordance with Rule 3, hereinbefore quoted.

"The Carrier avers that the instant case is without support under the rules of the controlling agreement and should be declined."

OPINION OF BOARD: A consideration of the foregoing statement of position on behalf of the employe and carrier makes it apparent that the decision of this case must depend upon an interpretation of what is meant by "Emergency Offices" under Rule 10. This interpretation is made difficult by previous conflicting awards, and the present Referee is unable to find any basis on which they can be harmonized.

In Award No. 395 a claim arose where, as the result of a slide on the Western Pacific, such services were required as to call in question the applicability of Rule 10 and in that case the claim of the employe was sustained. In that case there was no denial that the office at Flanigan, where the service was performed, was an Emergency Office and that the service was made necessary by the emergency.

In a later award, No. 923, there was a claim for time and expense incurred going to and coming from Ponca City and Garber, Oklahoma, to protect another job because of a washout at a bridge. The position of the carrier and employe concerning a rule substantially similar to Rule 10 was the same as that now before us for decision. In that case the extra service was made necessary, as in this one, by reason of detouring main line trains over the Garber-Ponca City branch line. In that case it was pointed out that both Ponca City and Garber are regular open stations and that the claimant was merely assigned to an extra trick of work made necessary by the emergency. It was held that the rule in question did not apply and the claim was denied.

The most recent cases which have been called to the attention of the Referee are the awards 1322 and 1323, and the facts in the award No. 1322 present a situation almost exactly parallel to the one which we are now considering. The claim there was for compensation under Rule 10 for services performed at Carpinteria, California, which was a regular station, the work in which was greatly increased by reason of slides and washouts. The Referee sitting with the Board in that case held in a lengthy opinion that there could be an emergency station within the meaning of Rule 10 in a station which already had an agent-telegrapher; that it was necessary to look at the facts and circumstances in the particular case and determine from them whether or not the establishment of the extra tricks at Carpinteria created an emergency office.

It was held in that opinion that such an office had been created and the claim was sustained. The decision seems to have been based upon the theory that there was a direct causal connection between the floods and the establishment of the extra tricks at Carpinteria, and that under the facts these extra tricks constituted an emergency office within the meaning of Rule 10.

In a companion case decided at the same time, No. 1323, the office which was open was actually an emergency office, not normally opened but opened at this time because of this particular catastrophe.

The present Referee is unable to reconcile these various holdings, and others which have been cited to him, and is unable to find any application of the rule of **stare decisis** running through the various awards. It seems obvious that neither of these cases follows a well defined pattern and it is therefore necessary that this Referee state his considered opinion as to what this rule means.

The exact wording of the rule is "Regular telegraphers taken from their assigned positions to be used at derailments, washouts, or similar emergency offices, will receive salary, etc. * * *"

That interpretation of the rule for which the employes contend would have repercussions which it would be impossible to measure or foresee and would inevitably lead to disputes and misunderstandings of a far reaching nature. Such a catastrophe as we are now considering might easily increase and disarrange railroad traffic with its necessary telegraphic communications to great distances in every direction from the point actually damaged. It is conceivable that extra operators might be needed at many points on the entire system of the railroad in rerouting traffic, securing men and materials, organizing wrecking and construction crews, reorganizing yard and switching facilities, etc.

To adopt the rule of causal connection as the basis for determining the extra compensation provided for in Rule 10 would raise a question as to every extra operator moved around or put to work under such circumstances, and it would be very difficult in each of these many cases to determine whether or not the extra service or the change of location was proximately caused by the emergency. In many cases it would be impossible to effect a true determination because the work might partly be so caused and partly not. Such disputes and misunderstandings could easily disrupt the morale of a large number of employes and cause a great deal of friction between employes and management. The employer would be discouraged from giving out as much employment as might be available lest it result in increased complication and misunderstandings.

The present Referee is of the opinion that Rule 10 is and is intended to be easily and simply understood, and that it applies only to Emergency Offices. The fact that a regular existing office happens to be conveniently close to the scene of disaster does not change its normal character of being a regular office as distinguished from an Emergency Office.

In the present case the services were rendered at Vincent which was a regular telegraphic office and not an office that was either opened or established by reason of the emergency and Rule 10 does not apply.

Under this interpretation of the rule it is unnecessary to decide the question raised as to whether or not the emergency had passed at the time of the employment.

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 is not applicable.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 2nd day of July, 1941.