

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 B. A. Benson be compensated under the provisions of Rule 10 of the agreement in effect between the parties to this dispute account services performed at Oceano and San Luis Obispo on the Coast Division, March 8th to 18th, inclusive, 1938."

EMPLOYEES' STATEMENT OF FACTS: "Due to conditions depicted in EXHIBITS 'E' to 'M' attached to and made a part of this submission, the Claimant, B. A. Benson, was ordered to and did perform service as covered by the Statement of Claim and as itemized in EXHIBIT 'A' attached hereto.

"Oceano to Lang and Soledad Canyon is 229 miles. San Luis Obispo to Lang and Soledad Canyon is 243 miles. Oceano and San Luis Obispo are located on the Coast Division of the Southern Pacific, Pacific Lines. Both are open telegraph offices, San Luis Obispo on a twenty-four hour basis and Oceano for a part of the day.

"Factual material establishing the existence of emergency conditions is found in EXHIBITS 'E' to 'M,' which Exhibits are photo-offset reproductions from the Southern Pacific Bulletin, Volume 22, Number 4 (see bottom of EXHIBIT 'F').

"We quote and comment upon some pertinent paragraphs from these Exhibits:

"EXHIBIT 'E': Sketch shows location of the more important points where emergencies prevailed. We have underscored the San Joaquin line points of Soledad Canyon, Ravenna, Lang, Russ, Santa Clara River and Tunnel 25. The sketch shows Santa Barbara which is the beginning of the Coast Line, Oceano and San Luis Obispo being located 104.8 miles and 118.6 miles beyond Santa Barbara.

"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

"The service performed by Telegrapher Benson at Oceano and San Luis Obispo was in no respect different from, nor was he subjected to any more inconvenience or any more expense than would have obtained had he gone to either Oceano or San Luis Obispo to relieve a regular telegrapher laying off or to perform service account heavy movement of passenger traffic due to a convention. Telegrapher Benson did not encounter any of the adverse conditions incident to the performing of service at a derailment or a washout; there were no such elements involved in the service performed by him at either Oceano or San Luis Obispo.

"NRAB, Third Division, in Award 130—found:

'The addition of one or more shifts of telegraph and/or telephone service at a station where an agent or operator is regularly assigned does not thereby create an "emergency office" * * *.'

"This declaration is quite clear, that the addition of one or more shifts at a regularly established office does not create an 'emergency office,' that being exactly what occurred in the instant case.

"Board's attention is directed to Award 923, NRAB, Third Division; as their opinion the Board declared that:

'As stated in Award 130, 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.'

and denied the claim.

"As to the claim for nine (9) hours' pay for day (March 8, 1938) that Mr. Benson worked at Oceano. 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. Benson was assigned to 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: This claim is similar in its facts to that made in Docket TE-1538, and in which an award was entered on July 2, 1941, under Award Number 1493. It requires an interpretation of the same rule as was discussed in that award and it is apparent that the opinion and disposition therein arrived at must be controlling in this case.

On a consideration of this present award an extensive reargument of the entire question was considered and taken under advisement, but the referee is unable to arrive at any other conclusion than in the previous case and in this, a majority of the Board concurs.

It has been earnestly urged that this interpretation taken in connection with previous interpretations has created some confusion and uncertainty as to the true intent and meaning of Rule 10. It is urged that this Board

should so interpret Rule 10, as to cover cases like the one now under consideration and the other this day disposed of on the same principles. That there has been some confusion is obvious from the number of cases that have been brought before this Board and from the conflict in prior decisions, which was brought out and discussed in Award No. 1493. As there stated, the present Referee and the present majority of the Board are unable to reconcile these prior awards and have been forced to choose between them and to arrive at the conclusion above referred to. It is presently insisted that this Board has the power to make what is referred to as a more liberal interpretation of Rule 10, and that it ought to be done. Present Referee and majority of the Board cannot agree with that contention because it does not seem possible to find any ambiguity in the meaning of Rule 10. It seems to the Board that the ambiguity has arisen from previous construction rather than the wording of the rule. After a full consideration of the matter we are now, as we were at the time of the adoption of Award No. 1493, of the opinion that it would be making a new rule rather than an interpretation of one made by the parties, for us to take any different position than we have already taken. Any effort to apply the casual relationship theory would in our opinion leave the entire subject matter without any definite rule for guidance, either as to the time, place or circumstance surrounding a flood or other catastrophe. We must adhere to what we said in Award No. 1493, and the result must be that the claim will be denied.

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 21st day of July, 1941.