

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Norris C. Bakke, 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 Lyle Purdin be compensated under Rule 10 of the agreement in effect between the two parties to this dispute for services performed at Fields, Portland Division, February 6th to 15th, inclusive, 1938.

EMPLOYES' STATEMENT OF FACTS: Extra Telegrapher Purdin was ordered to Fields, February 6th, 1938 to protect second telegraph position, 4:00 P. M. to 12:00 Midnight, account heavy storms, necessitating the operation of snow fighting equipment in clearing and keeping clear tracks in the territory. This work was carried on day and night during this period.

Fields is located in the Cascade range of mountains, 70.7 miles east of Eugene Yard and 26.2 miles west of Crescent Lake. Fields was not an open telegraph office immediately prior to the establishment of the position involved in this claim. Fields is normally closed except during time of heavy storms when temporary positions are opened for the duration of a specific emergency.

We quote excerpts from the Southern Pacific Bulletin of March, 1938, references to emergency conditions in the Cascade range of mountains during February, 1938:

Page 5: "Just previous to the gale on the 9th (February), a heavy snow and wind storm in the Cascades, and sleet and blizzard at Black Butte, caused several line interruptions."

Page 2: "The recent snow storm was also outstanding in that it caused the operation of so much snow fighting equipment over a total of 312 miles on widely separated districts. At one time this fight was in progress on the Sacramento Division between Gold Run and Sparks, 94 miles; between Dunsmuir and Klamath Falls, 108 miles; Ashland and Black Butte, 84 miles; and between Crescent Lake and Fields, 26 miles, over the Cascades on Portland Division. Seven rotary plows, six flangers, one spreader operated in the Sierra; four rotaries, five flangers, one spreader on Shasta District; and one rotary, one flanger, two spreaders in the Cascades."

Page 12: "February 12—Severe storm breaking about 11:00 P. M. and continuing until 3:00 P. M. the following day, disrupted all rail and wire service north of Dunsmuir."

On innumerable occasions the Fields station has been temporarily operated under the conditions mentioned above. It has been the carrier's consistent and proper position that the Fields station from February 7 to 16, 1938, was a **temporary office and not an emergency office**. This is not a subtle distinction. It is true that all emergency offices are also temporary offices, but all temporary offices are not emergency offices. An emergency office coming within the purview of rule 10 is properly defined as an office established or opened at the scene of or in the immediate vicinity of a derailment, washout, landslide, fire, snowslide, or similar catastrophe or emergency and used in direct connection with the said catastrophe or emergency. The Fields station during the period February 7 to 16, 1938, does not come within this definition of an emergency office.

Applicable rates of pay for services performed by telegraphers when assigned to the Fields office, are established by the current agreement (see rule 2 (b), *supra*). The said office is not operated continuously, but is operated temporarily during certain periods, when, because of snow storms and the use of additional snow fighting equipment, it is necessary to open the said station to provide the necessary facilities, including telegraph facilities, in order that the said snow fighting equipment function properly and in order to keep the line clear. At no time in the past has the petitioner contended that the carrier did not have the right to temporarily assign a telegrapher or telegraphers to the said office under the circumstances mentioned above and to pay the said telegrapher or telegraphers in accordance with the rate mentioned above; furthermore, the petitioner has never contended that rule 10 was applicable to such assignment or assignments.

CONCLUSION

Having completely established that extra telegrapher Purdin was properly compensated for services performed at Fields during the period February 7 to 16, 1938, and having further completely established that the petitioner is in error in contending that extra telegrapher Purdin should have been compensated in accordance with rule 10 of the current agreement and the memorandum of agreement dated January 1, 1938 (Exhibit "F"), for the said service, the carrier respectfully asserts that it is incumbent upon the Board to deny the alleged claim in the instant case.

The carrier reserves the right if and when it is furnished with the petition filed ex parte by the petitioner in this case, which it has not seen, to make such further answer and defense as it may deem necessary and proper in relation to all allegations and claims as may have been advanced by the petitioner in such petition and which have not been answered in this its initial answer.

OPINION OF BOARD: From a reading and study of the above and foregoing statements of the respective parties it becomes apparent that the question for determination is whether the service of Purdin at Fields, Oregon constituted emergency service within the meaning of rule 10.

To sustain their position the employees rely particularly on two propositions, viz., (1) that the facts and circumstances are sufficiently similar to those in docket TE-1298 (Award 1323) to justify the Board's reaching a similar conclusion; (2) that an agreed upon interpretation between the carrier and employees on the property requires acknowledgement of the correctness of Purdin's claim and its payment.

The employees seem to feel that because the storm which prevailed in the Crystal Lake area (Award 1323) might have extended (and probably did) as far north and west as Fields, Oregon that the same facts relating to emergencies was ipso facto established, relying particularly on a statement from a news bulletin of the carrier to the effect that the storm "disrupted all rail and wire service north of Dunsmuir." Fields is over 200 miles from Dunsmuir, and Purdin makes no claim that there was any disruption of service at Fields.

Anyone living in the high country, as does this Referee, knows that heavy snowstorms are common in the winter time and the use of snow removing equipment is part of the normal operation of the railroad during the winter season. We will concede that although "snow slides" are not included in the specific language of rule 10 that they may properly be included in the language "similar emergency." But before snow storms and snow slides may be used as a basis for a claim under rule 10 claimant must show a factual situation at least comparable to that set out in Award 1323, which this Referee feels should constitute a minimum for the purpose.

As to the claim that there was an agreed upon interpretation, this Referee neither affirms nor denies that there was. Certainly those payments which were made by the carrier under Award 1323 at Crystal Lake cannot be considered as evidence of agreement of interpretation and the other claims paid under the rule, as set out by the employees here do not give sufficient information upon which any judgment can be based, because analogy of factual situation is lacking.

To constitute emergency service it would seem that something in the nature of a catastrophe with consequent disruption of service and destruction of property should occur at least in the near vicinity of the place where the special service is performed before rule 10 may be invoked. That was wholly lacking in this case.

We think this record shows that Purdin's employment at Fields was a temporary, seasonal service, not precipitated or caused by any emergency, and that rule 10 has no application.

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 claimant's work at Fields was not work at an emergency office within the meaning of rule 10.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 25th day of September, 1942.