Award No. 2105
Docket No. TE-2081

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 R. D. Luckenbill, Los Angeles Division, be compensated under Rule 10 of the Telegraphers' Agreement and that certain Memorandum of Understanding dated San Francisco, Calif., January 3, 1938, for service performed at Amos, Los Angeles Division, September 13, 14 and 15, 1939.

EMPLOYES' STATEMENT OF FACTS: Claimant, Telegrapher Luckenbill, was ordered to and did open the closed telegraph office at Amos, Los Angeles Division and performed service thereat September 13, 14 and 15, 1939, this service being of a temporary and emergency nature made necessary because of emergency conditions consisting of floods, washouts, damaged tracks and roadbeds causing excessive and unusual delays to traffic, complete stoppage of traffic at intermittent periods and detouring of traffic because of the emergency conditions. When the emergency ceased to exist, the position was abolished and the office closed. The emergency conditions extended over a wide area in California and Arizona.

We quote from the Southern Pacific Bulletin of September, 1939:

"FLOOD DAMAGE ON L. A. DIVISION

"As the Bulletin went to press, Operating Department officials announced that regular service had been restored on the morning of September 7 over the Sunset Route, following a 30-hour tie-up of trains due to severe washouts between Araz Junction and Indio on Los Angeles Division.

"Heavy rains which began falling at 3:00 A. M. September 4 flooded four miles of track between Thermal and Mecca, but quick action by maintenance forces resulted in clearing the line that same evening. A second storm the morning of the 5th, however, resulted in serious washouts at a number of points between Araz Jct. and Indio and between Niland and Brawley on the Imperial Valley line.

"Westbound trains were routed from Yuma to El Centro, where passengers were transferred to buses for completion of their journey to Los Angeles. Passengers were transferred from eastbound trains at Colton and Indio and taken to El Centro by bus, where they continued their trip by train. Passengers on three eastbound trains which had been able to proceed as far as Niland were held there as

unambiguous language of the rule and by applying those principles and interpretations to the instant case the conclusion is inescapable that to sustain the interpretation requested by the petitioner in the instant case would violate the specific language of Rule 10.

CONCLUSION

The carrier having completely established that it properly compensated Extra Telegrapher Luckenbill for service performed at Amos on September 14, 1939, respectfully asserts that it is incumbent upon the Board to deny the alleged claim in the instant case.

OPINION OF BOARD: This Docket was submitted to and considered by the Referee with the following dockets, TE-2083, TE-2093, TE-2094, TE-2095, TE-2097, TE-2098, TE-2099, TE-2101, TE-2102, TE-2103 and TE-2104. In each of these dockets the question presented is whether Rule 10 of the Agreement is applicable to the facts of record. The same Rule 10 has been before this Division on numerous occasions. See Awards 395, 1322, 1323, 1493 and 1494, 1520, 1522, 1979, 1980, 1981, and 1982. There is nothing in the facts found in the Dockets under consideration to distinguish them or any of them from one or several of the cited Awards. Under the construction of Rule 10, in Awards 1493, 1494, 1520, and 1522, these claims should all be denied; under the construction of the rule in all other cited Awards, the claims should all be sustained. There is a direct conflict in the awards, which cannot be reconciled. We adhere to the views expressed in the Opinions in Awards 395, 1322, 1323, 1979, 1980, 1981, and 1982, and it follows that these claims should be sustained.

This construction is confirmed by the carrier's own practice in effecting settlements on other occasions. It also appears that on January 3, 1938, the parties entered into a supplemental agreement relating to Rule 10. This supplemental agreement was made some months after the rule was construed by this Division in Award 395, and no exception having been taken to Award 395 in the supplemental agreement, its language must be read in the light of that Award.

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 employes involved in this dispute are respectively carrier and employes 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 claimants should be compensated under Rule 10.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 8th day of March, 1943.

Dissent
to

Award 2105, Docket TE-2081	**Award 2111, Docket TE-2098**
Award 2106, Docket TE-2083	**Award 2112, Docket TE-2099**
Award 2107, Docket TE-2093	**Award 2113, Docket TE-2101**
Award 2108, Docket TE-2094	**Award 2114, Docket TE-2102**
Award 2109, Docket TE-2095	**Award 2115, Docket TE-2103**
Award 2110, Docket TE-2097	**Award 2116, Docket TE-2104**

To the dissents in Awards 1322, 1323, 1979, 1980, 1981, and 1982, we add that to apply Rule 10, Emergency Service, to every office established, to increases of force and to relief service performed in existing offices, etc., simply because at some prior time there had been a derailment or washout on some part of the Carrier's property, either near or remote, represents misunderstanding of the facts and intent and meaning of the agreement.

Rule 10 does apply to "Emergency Service" but neither by its language or prior application has it been nor should it be applied to any service other than "* * * at derailments, washouts, or similar emergency offices * * *."

The supplemental agreement of January 3, 1938 was an agreed upon interpretation of paragraph (c) of Rule 10. It has no application or bearing on the question in dispute, i. e., what constitutes emergency office service, unless and until it had been determined that Rule 10 was applicable.

This supplemental agreement and prior settlements do not, in our opinion, determine that question nor confirm the Referee's construction of Rule 10.

In view of the facts presented, the provisions of Rule 10, as well as contrary awards of this Division dealing with Emergency Service rules, both with and without a referee, we hold Rule 10 was improperly applied and that the awards **are erroneous.**

/s/ R. H. Allison
/s/ A. H. Jones
/s/ C. P. Dugan
/s/ R. F. Ray
/s/ C. C. Cook