

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 E. J. Hillings be compensated under the provisions of Rule 10 of the agreement in effect and that certain Memorandum of Agreement dated San Francisco, Calif., January 3, 1938, for time consumed en route to and from Bassett and services performed at Bassett, Los Angeles Division, March 9 to April 2, inclusive, 1938.

EMPLOYES' STATEMENT OF FACTS: Due to heavy storms and flood conditions resulting in washed out bridges and trackage, Telegrapher E. J. Hillings was ordered to perform service at Bassett, Los Angeles Division, on March 9th and performed service from 12:01 A.M. to 8:00 A.M., daily, March 9th to and including April 2nd, 1938.

Bassett is located on the Pomona subdivision of the Los Angeles Division at mile post 497.3. Normally is manned by an agent-telegrapher, but in this emergency condition additional telegraphers were required to afford continuous service.

Traffic through Bassett on the Pomona subdivision is operated on single track. Bassett is also the junction point on the west for the Covina Branch. This branch line extends from Bassett to through Covina to Pomona, where it again joins the main line from Los Angeles to Colton. Bassett is 15.4 miles from Los Angeles and 41.7 miles from Colton.

We quote from EXHIBITS "E," "G" and "H," excerpts which will give ready reference to factual material as to emergency conditions obtaining:

EXHIBIT "E"—

"Los Angeles: Double-track bridge over L. A. River collapsed; 200 feet of embankment approach to Arroyo Seco bridge washed out; river bank cut back up to 80 feet at Taylor Yard, undermining tracks."

"Bassett: Two trestles to west over San Gabriel River and Eaton Wash, and others badly damaged."

"Branch lines: Extensive damage throughout area; roadbed undermined and side cut; necessary restore many washed out trestles."

"Colton: Lytle Creek cut channel 200 feet wide through yard, undermining tracks; yard covered with sand over one foot deep; 315 feet of Santa Ana River trestle and 135 feet of embankment washed out."

Bassett was, prior to March 8, 1938, operated with an agent-telegrapher assigned thereto from 9:00 A. M. to 6:00 P. M. with one-hour meal period (see paragraph 2, carrier's statement of facts.)

The factual situations in the instant case and in Awards 1493 and 1494 are identical, with the exception of the stations, claimants and periods involved. In Awards 1493 and 1494, the claims were denied.

Subsequent to Awards 1493 and 1494, the Board considered two cases, namely, Awards 1520 and 1522, and, like Awards 1493 and 1494, denied the claims, predicated its decisions on the principles and interpretation of Rule 10 established by Awards 1493 and 1494.

CONCLUSION

The carrier submits that the interpretation of Rule 10 established by the Board in Awards 1493, 1494, 1520 and 1522, is based on the clear and unambiguous language of the rule; it is a proper interpretation and should be applied in the instant case and therefore it is incumbent upon the Board to deny the alleged claim in the instant case.

OPINION OF BOARD: This claim is governed by Docket TE-2081, Award No. 2105.

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 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