

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 M. R. Dunagan be compensated under the provisions of Rule 10 of the Telegraphers' Agreement for service performed at Hadley Tower, California, and while enroute thereto and therefrom, 7:30 P. M., March 12th to 10:00 P. M., March 19th, inclusive, 1938.

EMPLOYES' STATEMENT OF FACTS: Telegrapher M. R. Dunagan, seniority date September 3, 1936, Western Division, was ordered to Hadley Tower, Coast Division, for service account emergency conditions and performed service at that point as specified in the Statement of Claim and under Rule 10 of the Telegraphers' Agreement.

Hadley Tower is located on the Coast Division, 7 miles east of San Luis Obispo, a twenty-four hour telegraph office, 17.4 miles west of Guadalupe, a twenty-four hour telegraph office, Santa Barbara (EXHIBIT "E"), is 111.6 miles east of Hadley Tower. Summerland (EXHIBIT "E") is adjacent to Santa Barbara. The entire territory shown in EXHIBIT E to and including Los Angeles and extending over the San Joaquin Line through Soledad Canyon being storm bound, caused the establishment of this position at Hadley Tower to more effectively cope with the emergency conditions. Immediately the emergency ceased to exist, this position was abolished.

Hadley Tower, previous to the creation of the position here discussed, was manned by one telegrapher-towerman, hours 8:00 P. M. to 4:00 A. M. This position manned by Claimant Dunagan worked 4:00 A. M. to 12:00 noon.

We quote from EXHIBITS "E," "F," "G," "H" and "K," particularly pertinent material establishing that an emergency under Rule 10, Telegraphers' Agreement, existed, although the entire set of pictorial EXHIBITS "E" to "M" inclusive must be studied in order to secure a correct perspective of the extreme emergency which caused the establishment of positions more than one hundred miles distant, the only comparable instance of major proportions being the overflow of mud from Mt. Shasta across the tracks at Bolam, (see pages 9 to 18 inclusive of this Brief, on claims paid).

EXHIBITS "E" and "F"—

"Water running over tops of bridges east and west of Carpinteria . . . one pier of Montalvo bridge out of line . . . Santa Clara River running full . . . 75 feet of the bridge at Hewitt washed out . . . Los Angeles River still rising . . . two girders first crossing Bridge at Day-

Applicable rates of pay for services performed by telegrapher-towermen assigned to the Hadley Tower are established by the current agreement (see paragraph 1, carrier's statement of facts). The second telegrapher-towerman's position at Hadley Tower is not operated continuously but is operated temporarily during certain periods when, because of increased traffic, it is necessary to assign a second telegrapher-towerman thereto. At no time in the past has the petitioner contended that the carrier did not have the right to temporarily assign a telegrapher-towerman or telegrapher-towermen at Hadley Tower and to compensate them at the rate provided for in the agreement.

The petitioner must admit that the use of Extra Telegrapher Dunagan at Hadley Tower, during the period March 13 to 19, inclusive, 1938, was solely for the purpose of assisting in the movement of increased traffic. How the petitioner will distinguish between the operation of the Hadley Tower in the past when a second telegrapher-towerman was assigned thereto to assist in the handling of increased traffic and the operation of the tower during the period March 13 to 19, inclusive, 1938, is beyond the comprehension of the carrier.

Further it is an established principle that a derailment at, or in the immediate vicinity of a regularly established telegraph office and because of such an emergency it is necessary to assign an additional telegrapher position to the regularly established office, does not bring Rule 10 into operation for the reason that such circumstances do not change the status of the office from a regularly established office to an emergency office to bring it within the purview of Rule 10.

In Award 1493, the Board, speaking through Referee Shaw, stated—

"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 between an Emergency Office."

The factual situation in the instant case and in Awards 1493, and 1494 are identical with the exception of the station, claimant and period involved. In Awards 1493 and 1494 the claims were denied.

Subsequent to Awards 1493 and 1494, the Board considered two cases, namely 1520 and 1522, and like Awards 1493 and 1494, denied the claims, predicated its decision 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, 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