

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Henri A. Burque, 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 L. C. McGaughy be compensated under the provisions of Rule 10 of the effective agreement and that certain Memorandum of Agreement dated January 3, 1938, for time en route to and from Cabazon and for services performed at Cabazon, Los Angeles Division, March 8th to 18th, inclusive, 1938.

EMPLOYES' STATEMENT OF FACTS: Due to heavy storms and flood conditions resulting in washouts and damaged trackage, Telegrapher L. C. McGaughy was ordered to Cabazon, Los Angeles Division, to begin service as telegrapher on March 8th, 1938.

Cabazon is located on the Beaumont Subdivision of the Los Angeles Division at Mile Post 574.1. Normally, Cabazon is manned by one telegrapher but during this emergency condition it was necessary to establish an additional position.

Traffic through Cabazon is operated on single track. The first 24-hour office east of Cabazon is Palm Springs, 8.5 miles. The first telegraph office open for the 24-hour period to the west of Cabazon is Beaumont, 18.1 miles. Palm Springs, the point shown on the map in EXHIBIT "E," with photographic reproduction of washout that occurred just west of Palm Springs in EXHIBIT "I" is approximately 8 miles of Cabazon. Colton, the point shown on map in EXHIBIT "E," with photographic reproductions in EXHIBIT "E" and "G," is 35.1 miles west of Cabazon.

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

EXHIBIT "E"—Photographic reproduction of map—

"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."

"Palm Springs: Two trestles badly damaged; track washed for considerable distance in this area."

EXHIBIT "F"—

"... 25-foot wooden structure out near Beaumont. . ."

EXHIBIT "G"—Photographic reproduction.

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

How the petitioner will distinguish between the operation of the Cabazon station in the past when a second telegrapher-clerk was assigned thereto to assist in the handling of increased traffic and the operation of the station during the period March 8 to March 18, inclusive, 1938 is beyond the comprehension of the carrier. The petitioner must admit that the use of the second telegrapher-clerk at Cabazon between March 8 and March 18, 1938, was solely for the purpose of performing regular telegrapher-clerk duties in the movement of increased traffic.

Furthermore, it is an established principle that a derailment, washout or similar emergency at or in the immediate vicinity of a regularly established telegraph office and because of such 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 as to bring it within the purview of Rule 10. In Award 1493, this 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 from an Emergency Office."

Cabazon was, prior to March 8, 1938, operated with an agent-telegrapher assigned thereto from 7:00 A. M. to 4:00 P. M. with one-hour meal period (see paragraph 2, carrier's statement of facts).

The factual situation 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, predicating 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 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-2281, Award No. 2403.

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 3rd day of December, 1943.

Dissent to

Award 2403—Docket TE-2281	Award 2408—Docket TE-2287
Award 2404—Docket TE-2282	Award 2409—Docket TE-2288
Award 2405—Docket TE-2284	Award 2410—Docket TE-2333
Award 2406—Docket TE-2285	Award 2411—Docket TE-2334
Award 2407—Docket TE-2286	Award 2412—Docket TE-2335
Award 2413—Docket TE-2336	

These Awards err in their adoption of extreme implications from certain prior awards which have followed a theory of causal connection in interpretation and application of Rule 10, Emergency Service.

This rule by its express and unambiguous terms, considered in the light of realism and practical knowledge, is confined to telegraph service at the scene of derailments, washouts, or similar emergency offices opened temporarily to deal with those emergent conditions. The rule does not comprehend telegraph service which the Carrier elects to continue or add otherwise to counteract results or conditions which, because of remote relation, may thus be said to have a so-called causal connection with the emergency.

Reference is made to our dissents in the prior awards which are considered in the Opinion of confronting Award 2403, Docket TE-2281.

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