

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 H. H. Mayberry, Sacramento Division, be compensated under Rule 10 of the Telegraphers' Agreement and that certain Memorandum of Understanding dated San Francisco, Calif., January 3, 1938, for services performed at Canby, Sacramento Division, February 28 to March 7, 1940 and at Castella, Sacramento Division, March 7 to 12th, inclusive, 1940.

EMPLOYES' STATEMENT OF FACTS: The factual situation is covered by the Carrier's publication, The Southern Pacific Bulletin of April, 1940, from which we now quote:

"HEAVY TOLL WHEN FLOODS HIT SACRAMENTO VALLEY LINE

Upholding the railroad tradition that 'freight and passengers must be kept moving,' Southern Pacific forces successfully met a major emergency when torrential rains fell in northern California as February drew to a close, and again triumphed over storms in a brief but violent return of flood conditions to the same area at the end of March.

Heavy rains which had been falling almost steadily for several days began to take their toll on February 26 when a rock and mud slide buried 200 feet of track at Pollock, about 15 miles north of the Shasta Dam site, derailing five freight cars and blocking the Shasta Route main line. For the next two days reports of washouts, slides, submerged tracks and other destruction to property poured in from many sectors of northern California, and when the flood waters had abated sufficiently to permit a survey of the stricken areas it was found that Southern Pacific had suffered property damage of approximately \$400,000.

The major portion of the damage was centered in three districts: (1) between Cantara, six miles north of Dunsmuir, and Redding on the Shasta Route; (2) between Gerber and Marysville on the East Side, Tehama and Woodland on the West Side main lines and a number of branch lines; (3) between Vasona Junction and Santa Cruz on the San Jose-Santa Cruz branch of Coast Division. In addition, reports of damage were received from many scattered points on the Coast and Western Divisions.

From Cantara to Redding the railroad winds through the Sacramento River canyon, closely following the shore of the river. Rising to a height exceeding any previously recorded level, the river roared

It has been the carrier's consistent and proper position that the establishment of an additional telegrapher position at Canby office from March 1 to March 6, 1940, did not thereby make Canby an emergency office. It has likewise been the carrier's consistent and proper position that the Castella office was, from March 8 to March 10, inclusive, 1940, 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. The petitioner could not and would not contend that the Castella office, while operated to handle increased traffic during certain periods, was an emergency office, but would have to admit that during such periods it was a temporary office. In other words, 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, snow slide, or similar catastrophe or emergency and used in direct connection with the said catastrophe or emergency. The Castella office during the period March 8 to March 10, inclusive, does not come within this definition of an emergency office.

The third trick telegrapher position at Canby and the second trick telegrapher position at Castella have not been operated continuously, but have been operated temporarily at certain periods when, because of increased traffic it has been necessary to assign telegraphers to said positions. At no time in the past has the petitioner contended that the carrier did not have the right to temporarily assign a third trick telegrapher at Canby and/or a second trick telegrapher at Castella, and to compensate them at the agreement rate.

The petitioner must admit that the use of the claimant at Canby from March 1 to March 6, and at Castella from March 8 to March 10, was solely for the purpose of assisting in the handling of increased traffic. How the petitioner will distinguish between the operation of the Canby and Castella offices in the past when telegraphers were assigned to assist in the handling of increased traffic and the operation of the said offices during the periods March 1 to 6, inclusive, and March 8 to 10, inclusive, respectively, is beyond the comprehension of the carrier.

The Board's attention is directed to Awards 1493, 1494, 1520 and 1522. The carrier submits that the principles and interpretations established by said awards are proper and based on the clear and unambiguous language of the rule. By applying said principles and interpretations to the instant case, the conclusion is inescapable that to sustain the interpretation requested by the petitioner would be in direct opposition to the specific provisions of Rule 10.

CONCLUSION

Having conclusively established that Rule 10 of the current agreement is in no way applicable to the alleged claim in the instant case and that the claimant was properly compensated in accordance with the current agreement for deadheading and for services performed at Canby and Castella during the period February 28 to March 11, inclusive, 1940, the carrier, therefore, respectfully asserts that 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, so far as services performed at Canby Station are concerned, and by Docket TE-2282, Award No. 2404, so far as services performed at Castella Station are concerned.

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