

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. M. McRae be compensated under Rule 10 of the Telegraphers' Agreement and that certain Memorandum of Understanding dated San Francisco, Calif., January 3, 1938, for all services performed, February 26 to March 12, inclusive, 1940.

EMPLOYES' STATEMENT OF FACTS: Account floods, slides, derailments, washouts and storm conditions of practically every nature, Claimant McRae was used February 26th, 1940 to March 12th, 1940 at Gerber, Tule Lake, Dunsmuir, Matheson and Motion. We quote from EXHIBIT "A" Claimant's own narrative as to factual situation:

"On instructions of night chief dispatcher at 10:45 PM February 26th 1940 prepared to leave for Davis in own automobile to leave on arrival of Operator B. F. Davidson, whom I agreed to transport to Davis where both could catch S. P. Train No. 20 which was being held at Davis pending our arrival. Prepared to depart at 11:00 PM, Opr. Davidson arrived in automobile of W. F. Turner, and transferred to my car at 11:25 PM, immediately after which we left for Davis in a driving, blinding rainstorm and at Davis transferred to train No. 20, leaving car parked outside across the tracks from the depot as no time to find indoor parking place. Proceeded to Gerber on Train 20 where register sheet shows arrival time of 2:57 AM February 27th. The writer sat up in day coach throughout trip and was sleeping at time of arrival at Gerber remaining in train till awakening at approximately 5:45 AM. Train was parked short distance west of station so I walked to station to find out what arrangements if any were being made to take us further, but found out nothing was being run north of Gerber. Passengers were beginning to appear from trains 24, 18 and 8 also stalled at Gerber and I answered what queries were being made with what information I could gather as the train order operator was being fully occupied with Sacramento and Dunsmuir Dispatchers. At 8:00 AM the agent had not appeared and most of the stranded passengers had awakened and were besieging the station which made it necessary to give the regular forces considerable assistance in answering their queries and placating them wherever possible. Approximately 10:30 AM, matters were becoming disorganized as the agent had not yet appeared and on receipt of telephone advice that the agent was withheld from reaching Gerber by high water, I assumed the authority necessary to co-ordinate the activities of the station forces

ing certain periods when, because of increased traffic, it has been necessary to assign a telegrapher thereto. The extra-telegrapher position at Dunsmuir is an additional position used when necessary because of increased traffic. At no time in the past has the petitioner contended that the carrier did not have the right to temporarily assign a third telegrapher at Tule Lake or an additional telegrapher position at Dunsmuir and to compensate him at the agreement rate.

There is no basis whatever for the petitioner's contention that the claimant's voluntary occupation of the agent's position at Gerber during the regular agent's absence on February 27, constituted service under Rule 10 of the current agreement.

How the petitioner will distinguish between the operation of the Tule Lake and Dunsmuir stations in the past when additional telegraphers were assigned thereto to assist in the handling of increased traffic and the operation of the stations during the periods March 1 to 6, 1940, and March 7 to 11, 1940, respectively, is beyond the comprehension of the carrier. The petitioner must admit that the use of the claimant at Tule Lake and Dunsmuir between March 1 to 11, 1940, was solely for the purpose of assisting in the handling of increased traffic.

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 the claimant was properly compensated in accordance with the current agreement for deadheading and for services performed during the period from February 27 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. 2408.

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