

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

Lloyd K. Garrison, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
SOUTHERN PACIFIC COMPANY (PACIFIC LINES)**

DISPUTE.—

"Claim of the General Committee of The Order of Railroad Telegraphers, Southern Pacific Company (Pacific Lines), that E. A. Harn is entitled to one day's pay under Rule 10 of their Agreement with that Company for service performed at Altamont, California, May 25th, 1934."

FINDINGS.—The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds 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.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

As result of a deadlock, Lloyd K. Garrison was called in as Referee to sit with this Division as a member thereof.

An agreement bearing date of September 1, 1927, is in effect between the parties.

The parties have jointly certified to the following:

"Extra Telegrapher E. A. Harn, Western Division, who resided in Company living quarters at Altamont, was notified by Section Foreman at about 4 A. M., May 25th, 1934, to call the Train Dispatcher on the telephone from Altamont Station for the purpose of copying a train order. He remained on duty two hours and was compensated for two hours at the rate of .6625 per hour.

"This claim is based on Rule 10 of the Telegraphers' Agreement, which is as follows:

"(a) Regular telegraphers taken from their assigned positions to be used at derailments, wash-outs, or similar emergency offices, will receive salary of regular position, but in no case less than .8175 cents per hour. Extra telegraphers when used in similar service will receive .8175 cents per hour.

"(b) Nine (9) consecutive hours including a meal hour will constitute a day's work in such service. The company will provide shelter, board, and lodging without charge.

"(c) Time going to and from scene of emergency to be included in service for day in which deadheading is performed; but in no case will telegraphers receive less than one day's pay within each twenty-four hour period while so engaged."

Altamont Station had been discontinued as a train order office on November 14, 1932. The building was boarded up but the depot and living quarters on the second floor were maintained, and extra telegrapher Harn was permitted by the Carrier to reside free of charge in the station.

Early in the morning on May 25, 1934, a freight train was on its way from Tracy to Altamont. This freight train was being assisted by helper engine No. 2753. At the same time a vegetable train was approaching Niles from

where it was to go to Altamont and then Tracy. Since there was a steep grade between Niles and Altamont the vegetable train would either have to be supplied with a helper engine at Niles or else adopt the slower method of taking half the load to Altamont and returning to Niles for the other half. Since the freight train's helper engine No. 2753 was already en route for Altamont where the plan was for it to leave the freight train and return to Tracy, the sensible thing to do was to get word to the helper engine to go on from Altamont to Niles and pick up the vegetable train there.

There was, however, an alternative. If word could not be gotten to the helper engine at Altamont in time to have it go on, another helper engine could be sent from Oakland to Niles, Oakland being about the same distance from Niles that Altamont was. This second alternative would have been feasible, but since it would have required paying the wages for the helper engine crew from Oakland, the more economical plan was to get helper engine 2753 to do the job.

Accordingly the Train Dispatcher at Tracy through the Section Foreman at Altamont reached Harn and gave him the necessary instructions to be delivered to helper engine 2753. Harn handled the orders accordingly and helper engine 2753 went on to Niles and picked up the vegetable train.

The sole question in this case is whether Harn's services were of such a character as to call for compensation under Rule 10, set forth above. Telegraphers who are "taken from their assigned positions to be used at derailments, washouts, or similar emergency offices" are to be compensated under Rule 10. The petitioners take the position that for the purpose of what Harn was called upon to do, the Altamont Station was opened up as an "emergency office" within the meaning of Rule 10. But Rule 10 speaks of "*similar* emergency offices" and the word "similar" refers back to the words "derailments" and "washouts", clearly implying that the emergency offices embraced in the rule are those which are opened for the purpose of directing traffic following a derailment, a washout, or some similar contingency, such as fire, earthquake, slides, breaking or dislocating of rails, etc. This list of contingencies is not intended to be exclusive, but it cannot be stretched to include the type of happening which occurred in this case without doing violence to the language of the rule and extracting all significance from the use of the word "similar" in its context with the words "derailments" and "washouts". The evidence indicates that if Harn had not been available the Train Dispatcher at Tracy could have gotten in touch with Oakland and supplied the vegetable train at Niles with a helper engine so that there would have been no delay in the hauling of the train. Harn, therefore, was called in not to deal with an emergency similar to a derailment or a washout but simply to direct a particular train movement in the interests of railroad economy. Without attempting to define the precise extent of the rule, we do not think it was intended to apply to such a case as this.

AWARD

Claim denied.

By Order of Third Division:

NATIONAL RAILROAD ADJUSTMENT BOARD.

Attest:

H. A. JOHNSON, *Secretary*.

Dated at Chicago, Illinois, this 21st day of March 1936.