

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Frank M. Swacker, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE CHICAGO, ROCK ISLAND AND PACIFIC

THE CHICAGO, ROCK ISLAND AND GULF RYS.

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers on Chicago, Rock Island and Pacific Railway that, in accordance with Article 15, of Telegraphers' Agreement, Telegrapher F. T. Palmer, be paid actual expenses incurred while enroute to or from and while performing emergency work at Ponca City, Oklahoma, on May 21, 22, 23, and 24, 1938, and at Garber, Oklahoma, on May 25, 26, 27, and 28, 1938, totalling \$16.00."

EMPLOYEES' STATEMENT OF FACTS: "The Chicago, Rock Island and Pacific Railway Company and The Order of Railroad Telegraphers have an agreement covering the wages and working conditions of those employees occupying positions enumerated in the scope rule thereof, copies of which have been furnished to the Board. Telegrapher F. T. Palmer, an employee assigned to the extra board of the Oklahoma Division and having rights under the Telegraphers' Agreement, was ordered by proper authority May 20th, 1938, to report at Ponca City, Oklahoma, to protect a job created because of a washout at the Salt Fork river bridge near Pond Creek, Oklahoma (which made necessary the detouring of main line trains over the Garber-Ponca City branch line), where he was stationed for four days, May 21, 22, 23 and 24, 1938 then was sent to Garber, Oklahoma, to protect another job which was created because of the same Salt Fork river emergency, where he protected May 25, 26, 27 and 28, 1938, and was released from emergency service which was caused by the washout. And he was denied his expenses of \$16.00 for the eight days."

CARRIER'S STATEMENT OF FACTS: "In May, 1938, we experienced washout trouble at Pond Creek, Oklahoma, F. T. Palmer, an extra telegrapher, not regularly assigned, worked at Ponca City, Oklahoma, not the scene of the washout, 2:00 A. M. to 10:00 A. M. on May 22, 23, and 24, 1938, and at Garber, Oklahoma, not in the immediate vicinity of the washout, 1:00 A. M. to 8:00 A. M., May 25, and 12:00 A. M. to 8:00 A. M., May 26 and 27, 1938. Extra telegrapher Palmer was eventually paid at the rate of 69¢ per hour, which rate applies to the third trick at Ponca City, and at Garber. These were additional assignments at regular telegraph offices in established stations."

An agreement bearing date of January 1, 1928 is in effect between the parties.

POSITION OF EMPLOYEES: "It is the contention of the Telegraphers' Committee that Telegrapher Palmer's claim was in accordance with Article 15 of the Telegraphers' Agreement which reads:

office or job created to take care of conditions brought about by the emergency does not control. The controlling factor is that which necessitates the creation of the office or job.

"The committee believes that it has shown by the agreement and by precedents established by this Board that Telegrapher Palmer is entitled to his claim, and it is our prayer that the Board so award."

POSITION OF CARRIER: "Article 15 of the Telegraphers' Agreement reads:

'Telegraphers performing duties at wrecks, washouts, slides, snow blockades and or other similar emergency office, will receive a minimum of sixty-six (66¢) cents per hour with a minimum of eight (8) hours per day and overtime on basis herein provided and actual expenses while away from home. Time to be computed from time they start until they return, except for such time as they may be relieved from duty.' (The rate is now 71¢.)

"It has always been the understanding that Article 15, quoted above, covered regularly assigned telegraphers only taken from their regular assignments to work at wrecks or washouts, etc. F. T. Palmer was not a regular assigned telegrapher—he was an extra telegrapher. The rule has never been applied to require expenses to be paid to extra men. Therefore, he would not come under the above emergency rule.

"In addition, Article 15 provides: 'Telegraphers performing duties at wrecks, washouts, * * * etc.' The washout occurred at Pond Creek, Oklahoma, and not at Ponca City or Garber. Telegrapher Palmer, an extra telegrapher, assisted at Ponca City, a regular station, May 22, 23, and 24, 1938, and at Garber, a regular station, May 25, 26 and 27, 1938. While at both stations his work consisted of assisting in connection with detouring trains via Ponca City line and thence from Ponca City to Caldwell via the A. T. & S. F. The trains were detoured because of the washout trouble in the vicinity of Pond Creek. In other words, he was merely used to augment the regular forces at those points handling increased traffic account of the washout. He only handled work incidental to detouring of trains. If Palmer had been a regular assigned telegrapher at the time he was used at Ponca City and Garber, and he were taken from his regular assignment and sent to an emergency office such as a bunk car or a shanty of some kind set up at the point of washout, derailment or emergency point, then the telegraphers would be on good ground for making claim. Palmer, however, was not a regularly assigned telegrapher, neither was he sent to an emergency office, as above mentioned, at the point of washout, but was used at regular stations—Ponca City and Garber—to assist in regular telegrapher duties.

"Because Mr. Palmer was not a regularly assigned telegrapher and he was not used at the point of or in the vicinity of the washout, but was used to assist the regular force at Ponca City and Garber, at rates of pay applying at those stations, in handling increased train movements due to detours, there is no basis for claim of the employees and it should be denied."

OPINION OF BOARD: Telegrapher F. T. Palmer, an employe assigned to the extra board of the Oklahoma Division and having rights under the Telegraphers' Agreement, was ordered by proper authority May 20th, 1938, to report at Ponca City to protect a job created because of a washout at the Salt Fork river bridge near Pond Creek, Oklahoma (which made necessary the detouring of main line trains over the Garber-Ponca City branch line); where he was stationed for four days, May 21, 22, 23 and 24, 1938, following which he was sent to Garber, Oklahoma to protect another job which was created because of the same Salt Fork river emergency, where he protected May 25, 26, 27 and 28, 1938, when he was released from emergency service which was caused by the washout. Claim in this case is that in accordance

with Article 15 of Telegraphers' Agreement, Telegrapher F. T. Palmer be paid actual expenses incurred while enroute to or from and while performing emergency work at Ponca City, Oklahoma, on May 21, 22, 23 and 24, 1938, and at Garber, Oklahoma on May 25, 26, 27 and 28, 1938, totalling \$16.00.

Article 15 of the prevailing agreement reads:

"Emergency Service and Pay. Telegraphers performing duties at wrecks, washouts, slides, snow blockades and or other similar emergency office, will receive a minimum of sixty-six (66) cents per hour with a minimum of eight (8) hours per day and overtime on basis herein provided and actual expenses while away from home. Time to be computed from time they start until they return, except for such time as they may be relieved from duty."

There is no merit to the carrier's contention that the rule is applicable only to regularly assigned employees. It contains no limitation and applies to extra men as well. Both Ponca City and Garber are regular open stations and claimant was merely assigned to an extra trick thereat made necessary because of the washout.

As stated in Award 130, such addition of a shift at an open station does not thereby create an "emergency office"; we do not, however, perceive any particular facts and circumstances in this case which would justify us in holding that the establishment of the extra tricks at these stations made "emergency offices" of them. We cannot, however, agree with carrier's contention that an emergency office to be such must be located at or immediately adjacent to the blockade. It may be far removed but it is an office opened anywhere, temporarily, for the purpose of caring for resulting conditions, which otherwise would not have been opened.

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 employees involved in this dispute are respectively carrier and employees 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 Rule 15 is not applicable to the facts involved.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 31st day of July, 1939.