

Award No. 1979

Docket No. TE-1840

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Norris C. Bakke, 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 E. A. Nighswonger, be compensated under Rule 10 of the effective agreement and that certain Memorandum of Agreement dated January 3, 1938, for time consumed en route to and from Chatsworth and services performed at Chatsworth, Los Angeles Division, March 5th to 18th, inclusive, 1938.

EMPLOYES' STATEMENT OF FACTS: Due to heavy storms and flood conditions resulting in slides, washouts and damaged trackage, Telegrapher E. A. Nighswonger was ordered to Chatsworth, Los Angeles Division, to begin service as telegrapher at Chatsworth at 8:00 A. M., March 5th, 1938.

Chatsworth is located on the Ventura Subdivision of the Los Angeles Division at Mile Post 445.5. Immediately prior to period named in this claim, Chatsworth was manned by two telegraphers covering a 16-hour period from 4:00 P. M. to 8:00 A. M.; therefore, position was established in order to afford continuous service as the result of emergency conditions.

Traffic through Chatsworth is operated on single track, the first 24-hour office open east of Chatsworth is Burbank Junction, 26.1 miles. The first 24-hour office to the west of Chatsworth was Santa Susana, 8 miles and that office was opened as an emergency office on March 3rd. Tunnel 26 named in EXHIBIT "E," is located between Chatsworth and Santa Susana and is approximately 3½ miles west of Chatsworth. Hewitt, mentioned in EXHIBIT "E," is located 12.9 miles east of Chatsworth. Summerland, the point named in EXHIBIT "E" shown on the map in EXHIBIT "E" and photograph reproduction in EXHIBIT "H" and mentioned in EXHIBIT "L," is located 69.3 miles west of Chatsworth. Montalvo, the point mentioned in EXHIBIT "E," photograph reproduction of bridge, EXHIBIT "H," mentioned in EXHIBITS "E," "G" and "H" is located 42.3 miles west of Chatsworth.

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

EXHIBIT "E,"—photographic reproduction of map—

"Summerland: Slides in area along ocean shore."

"Montalvo: Bridge piers weakened; two out of line several inches and settled half inch."

"Tunnel 26: Slide, 1.6 miles south huge rock dynamited."

the said regularly established office, Rule 10 is not applicable 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."

Chatsworth was prior to March 5, 1938, a regularly established office with telegraphers assigned thereto during the hours 4:00 P. M. to 8:00 A. M. (see paragraph 2 of carrier's ex parte statement of facts).

The Board should note that to allow the alleged claim would result in establishing a discriminatory practice, namely, the payment to an extra telegrapher assigned to an established office of an amount in excess of that paid to the regularly assigned telegraphers. In the instant case the regularly assigned telegraphers at Chatsworth received, in accordance with the agreement, an hourly rate of .7125 per hour, yet if Rule 10 is held to be applicable to the work performed by the claimant at Chatsworth, he would receive an hourly rate of .8675 or in excess of the hourly rate received by the regularly assigned telegraphers. In other words, we would have the anomalous situation of an extra telegrapher receiving more than the regularly assigned telegrapher.

CONCLUSION

The carrier having completely established that it properly compensated extra telegrapher Nighswonger for deadheading on March 4, 1938, and for services performed at Chatsworth during the period March 5 to March 18, 1938, and having further completely established that the petitioner is in error in contending that extra telegrapher Nighswonger should have been compensated in accordance with Rule 10 of the current agreement and the memorandum of agreement dated January 3, 1938 (Exhibit "F"), for the said service, the carrier respectfully asserts that it is incumbent upon the Board to deny the alleged claim in the instant case.

OPINION OF BOARD: It was stated in behalf of the carrier, with commendable frankness, that this Referee is faced with the problem of making a choice between different conclusions reached by prior Referees. These Referees passed upon the same issue under facts and circumstances identical with those in the case before us. The same attitude was expressed in behalf of the employees. This Referee acknowledges that his task is thus defined.

A Referee always hesitates to overrule any awards but occasionally it becomes necessary if he is to be true to himself, and this Referee finds himself unable to concur in the latest Awards 1493, 1494, 1520, 1522 and reverts to the position of Award 1322.

In the final analysis the statements in Awards 1493, 1494, 1520 and 1522 get down to the proposition that the causal connection theory as stated in Award 1322 is unsound. This is indicated by the dissent to Award 1322. This so-called theory is simply another way of saying when did the emergency end. We say "when" because it is definitely established that the emergency service does not have to be rendered at the exact physical location of the emergency, so we do not in this case need to ask "where" does the emergency end.

We do not agree with the idea that a regularly established telegraph office may not be an emergency office. A very great deal depends upon the emergency, and it might be well to have a definition of that word in mind as we proceed. Emergency is defined as "a sudden or unexpected occurrence or condition calling for immediate action, a perplexing and pressing combination of circumstances" (Funk & Wagnalls New Standard). Now,

what do we have in this and the preceding similar cases? It is fair to say, the worst emergency that ever faced this railroad in southern California. Discounting somewhat the newspaper stories of the time the president of the road was probably not exaggerating when he said their job amounted to substantially a rebuilding of the road.

Considering the tremendous loss of property and threatened danger to life facing the road and these men who were called from their homes to render emergency service should not be penalized because they worked in an office that was regular. The rule requires an interpretation commensurate with the service and the emergency.

The carrier need not be gravely concerned as to when the emergency ends. It can determine that by the time it lets the men go back to their homes. That is when the emergency ends for them.

To those who would think that this statement is inconsistent with the conclusion reached in docket TE-1839 we say, in light of the above quoted definition, there was no emergency in that case.

The carrier argues that allowances of extra pay to the claimant in this case results in a discrimination in his favor over the men regularly employed at the office. The rule anticipates that in the language "Regular telegraphers taken from their assigned positions" and used at emergency offices shall receive extra compensation. The last sentence in paragraph (a) of the rule puts the extra telegrapher in the same category.

The fears expressed by the Referee in Awards 1493, 1494, 1520 and 1522 may or may not materialize. It is not likely that a catastrophe of similar proportions will strike this carrier soon. We hope not, but if it does, "sufficient unto the day is the evil thereof."

In conclusion we adopt the concluding paragraph of Award 1322 (immediately preceding the Findings by substituting "Chatsworth" for "Carpinteria." In dockets TE-1841 and 1842 we substitute "Santa Susana" and in docket TE-1843 "El Casco."

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 employee involved in this dispute are respectively carrier and employee 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's work at Chatsworth was work at an emergency office within the meaning of Rule 10.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 25th day of September, 1942.

DISSENT TO AWARD NO. 1979, DOCKET TE-1840

This Award, by its references and limited analysis of former Awards dealing with rules on "Emergency Service" under conditions, both similar and dis-similar with respect to facts of rule application to the circumstances of each respective case, has retrograded the improvement of opinion previously evidenced by the progression of Awards on the subject which preceded this Award.