Award No. 2106
Docket No. TE-2083

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Herbert B. Rudolph, 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, Pacific Lines, that for services performed enroute to and from, and while at Cabazon, Los Angeles Division, September 7 to September 20 inclusive, 1939, Telegrapher L. R. Carver, be compensated under Rule 10 of the Telegraphers' current agreement and under that certain memorandum of understanding pertaining thereto, dated San Francisco, California, January 3, 1938.

EMPLOYES' STATEMENT OF FACTS: On account of emergency conditions due to high water and washed out trackage (EXHIBIT "B"), Telegrapher Carver, the claimant in this case, was ordered to travel Calexico to Cabazon for service at the latter point, as detailed in EXHIBIT "A." Auto travel was made necessary because of the washed out condition of tracks and high water which rendered train service unreliable. The high water and washed out trackage covered an extensive area and we quote from the Southern Pacific Bulletin of September, 1939 on this point: (Page 4)

"FLOOD DAMAGE ON L. A. DIVISION

"As the Bulletin went to press, Operating Department officials announced that regular service had been restored on the morning of September 7 over the Sunset Route, following a 30-hour tie-up of trains due to severe washouts between Araz Junction and Indio on Los Angeles Division.

"Heavy rains which began falling at 3 A. M. September 4 flooded four miles of track between Thermal and Mecca, but quick action by maintenance forces resulted in clearing the line that same evening. A second storm the morning of the 5th, however, resulted in serious washouts at a number of points between Araz Jct. and Indio and between Niland and Brawley on the Imperial Valley line.

"Westbound trains were routed from Yuma to El Centro, where passengers were transferred to buses for completion of their journey to Los Angeles. Passengers were transferred from eastbound trains at Colton and Indio and taken to El Centro by bus, where they continued their trip by train. Passengers on three eastbound trains which had been able to proceed as far as Niland were held there as transfer to buses was impossible because of high water. During their enforced layover every precaution was taken to provide them every comfort.

"Powerful bulldozers, similar to those which played such a vital part in rehabilitating the storm-swept lines in southern Califarnia in March

an additional telegrapher position to the regularly established office, does not bring Rule 10 into operation, for the reason that such circumstances do not change the status of the office from a regularly established office to an emergency office to bring it within the purview of Rule 10. In Award 1493 the 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."

Cabazon was, prior to September 8, 1939, operated with an agent-telegrapher assigned thereto from 7:00 A. M. to 4:00 P. M., with one-hour meal period (see paragraph 2, carrier's statement of facts).

The factual situation in the instant case and in Awards 1493 and 1494 are identical, with the exception of the stations, claimants, and periods involved. In Awards 1493 and 1494 the claims were denied.

Subsequent to Awards 1493 and 1494, the Board considered two cases, namely, Awards 1520 and 1522, and, like Awards 1493 and 1494, denied the claims, predicating its decision on the principles and the interpretation of Rule 10 established by Awards 1493 and 1494.

CONCLUSION

The carrier submits that the interpretation of Rule 10 established by the Board in Awards 1493, 1494, 1520 and 1522 is based on the clear and unambiguous language of the rule; it is a proper interpretation, and should be applied in the instant case and therefore 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-2081, Award No. 2105.

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 8th day of March, 1943.

Dissent
to

Award 2105, Docket TE-2081	**Award 2111, Docket TE-2098**
Award 2106, Docket TE-2083	**Award 2112, Docket TE-2099**
Award 2107, Docket TE-2093	**Award 2113, Docket TE-2101**
Award 2108, Docket TE-2094	**Award 2114, Docket TE-2102**
Award 2109, Docket TE-2095	**Award 2115, Docket TE-2103**
Award 2110, Docket TE-2097	**Award 2116, Docket TE-2104**

To the dissents in Awards 1322, 1323, 1979, 1980, 1981, and 1982, we add that to apply Rule 10, Emergency Service, to every office established, to increases of force and to relief service performed in existing offices, etc., simply because at some prior time there had been a derailment or washout on some part of the Carrier's property, either near or remote, represents misunderstanding of the facts and intent and meaning of the agreement.

Rule 10 does apply to "Emergency Service" but neither by its language or prior application has it been nor should it be applied to any service other than "* * * at derailments, washouts, or similar emergency offices * * *."

The supplemental agreement of January 3, 1938 was an agreed upon interpretation of paragraph (c) of Rule 10. It has no application or bearing on the question in dispute, i. e., what constitutes emergency office service, unless and until it had been determined that Rule 10 was applicable.

This supplemental agreement and prior settlements do not, in our opinion, determine that question nor confirm the Referee's construction of Rule 10.

In view of the facts presented, the provisions of Rule 10, as well as contrary awards of this Division dealing with Emergency Service rules, both with and without a referee, we hold Rule 10 was improperly applied and that the awards are erroneous.

/s/ R. H. Allison
/s/ A. H. Jones
/s/ C. P. Dugan
/s/ R. F. Ray
/s/ C. C. Cook