

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 Company, Pacific Lines, that Telegrapher George A. Wright be compensated under Rule 10 of the agreement in effect and that certain Memorandum of Agreement dated January 3, 1938, for time en route to and from Colton and Indio, Los Angeles Division, and services performed at Colton and Indio, Los Angeles Division, March 7 to 20th, inclusive, 1938.

EMPLOYES' STATEMENT OF FACTS: Due to heavy storm and flood conditions resulting in washouts and damaged trackage, Telegrapher George A. Wright was ordered to the Los Angeles Division, departing from San Francisco train No. 70 at 6:15 P.M., March 7th, 1938, arriving Los Angeles 11:30 A.M., March 8th, 1938 and was instructed by Superintendent at Los Angeles to hold himself in readiness for call. On March 9th, was instructed to report at Colton at 12:01 A.M., March 10th, to work newly established position created as a result of emergency conditions. He worked this position at Colton from 12:01 A.M. to 8 A.M. daily, March 10th to 15th, inclusive. He was then instructed to report at Indio at 12:01 A.M., March 16th where he worked from 12:01 A.M. to 8:00 A.M., daily, March 16th to 19th, inclusive. He left Indio on March 19th at 12:36 P.M., arriving San Francisco, 7:50 A.M., March 20th, 1938.

Colton, the first point of service, is located on the Southern Pacific Sunset Route at mile post 539, 57.1 miles east of Los Angeles. Indio is located on this same line and route at mile post 610.9, 129 miles east of Los Angeles and 71.9 miles east of Colton. Both Colton and Indio are important yards for assembling and breaking up of trains and in addition, Indio is a subdivision terminal.

Colton, the first point at which service was performed, is shown in photographic reproduction in EXHIBIT "E," on map in same Exhibit, is mentioned in EXHIBIT "G" and further photographic reproductions appear in EXHIBIT "J."

Indio, the second point of service, was for several days during the flood conditions, the western terminus of train operation on the Sunset Route (mentioned in EXHIBIT "L"). With the restoration of a highway route, passengers were moved between Los Angeles and Indio by motor buses.

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

in the past when three telegraphers were employed during the 24-hour period, and when additional telegraphers were temporarily assigned at each point to assist in the handling of increased traffic during the period March 10 to 19, 1938, is beyond the comprehension of the carrier.

Furthermore, it is an established principle that a derailment, washout, or similar emergency at or in the immediate vicinity of a regularly established telegraph office, and because of such emergency it is necessary to assign 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."

Colton and Indio were, prior to March 10, 1938, regularly established, (see paragraph 2, carrier's statement of facts), continuously operated offices, with three telegraphers employed daily at each point, working in consecutive and continuous 8-hour shifts during the 24 hours of each day.

The Board's attention is directed to Awards 1493, 1494, 1520 and 1522. The carrier submits that the principles and interpretations established by Awards 1493, 1494, 1520 and 1522 are proper and based on the clear and unambiguous language of the rule and by applying those principles and interpretations to the instant case, the conclusion is inescapable that to sustain the interpretation requested by the petitioner in the instant case would violate the specific language of Rule 10. The factual situations in the instant case and in Awards 1520 and 1522 are identical, with the exception of the stations, claimants and periods involved. In Awards 1520 and 1522 the claims were denied.

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