

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 C. E. Alvis be compensated under the provisions of Rule 10 of the agreement in effect for service performed at Lang, San Joaquin Division, March 14th to 30th, inclusive, 1938.

EMPLOYES' STATEMENT OF FACTS: On account of flood conditions as shown in EXHIBITS "G" to "O," inclusive, Telegrapher Alvis performed service as outlined in the Statement of Claim and as itemized in EXHIBIT "A."

In "EXHIBIT "G," we have underscored the points of trouble area pertinent to this claim.

Ravenna to Acton is 2.9 miles.
Ravenna to Russ is 4.2 miles.
Ravenna to Lang is 8.4 miles.
Soledad Canyon is between Ravenna and Lang.

The railroad crosses the Santa Clara River several times between Ravenna and Lang.

Both Lang and Ravenna are located at the point of the trouble area.

We quote and comment upon some of the pertinent paragraphs in EXHIBITS "H" to "O," which are photo-offset reproductions from Southern Pacific Bulletin, Volume 22, Number 4 (see bottom of Exhibit "H").

EXHIBIT "H":

"Caliente and Tehachapi creeks rising rapidly . . . slide starting in cut at Tunnel 12 near Marcel in Tehachapi mountain . . . Tehachapi westbound main track washing out . . . rains of cloudburst proportions falling . . . signal line washed out between Ravenna and Lang . . . gangs having difficulty in keeping debris away from bridges in Soledad Canyon; if water continues to rise cannot keep from losing bridges . . . all openings of Santa Clara River running full . . . all wires down between Bakersfield and Los Angeles . . . two thousand feet of track at second crossing of Santa Clara River near Russ completely washed out; first crossing dangerous, liable to go tonight . . . 400 feet of track west side of Tunnel 17½ hanging in mid-air . . . 3,000 feet of track one mile below Ravenna ready to fall in, will be gone before night is over."

operated continuously but is operated temporarily during certain periods, when, because of increased traffic, it is necessary to assign a telegrapher thereto. At no time in the past has the petitioner contended that the carrier did not have the right to temporarily assign a second telegrapher at Lang and to compensate him at the agreement rate.

The petitioner must admit that the use of the second trick telegrapher at Lang during the period March 15 to 29, inclusive, 1938, was solely for the purpose of assisting in the movement of increased traffic. How the petitioner will distinguish between the operation of the Lang station in the past, when a second telegrapher was assigned thereto to assist in the handling of increased traffic, and the operation of the station during the period March 15 to 29, inclusive, 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."

Lang was, prior to March 14, 1938, operated with a first trick telegrapher assigned thereto from 7:00 P. M. to 4:00 A. M., with a 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, predicated 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