

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 A. J. Hoene be compensated under the provisions of Rule 10 of the Agreement in effect and that certain Memorandum of Agreement dated January 3, 1938, for time consumed en route to and from Bertram, Los Angeles Division, and for services performed at Bertram, Los Angeles Division, March 9 to 19, inclusive, 1938.

EMPLOYES' STATEMENT OF FACTS: Telegrapher A. J. Hoene was ordered from Los Angeles to Bertram March 9th, 1938. He left Los Angeles 8:45 P. M., March 9th, arriving Bertram 6:45 A. M., March 10th, on duty 8 A. M. to 4 P. M., daily, until and including March 19th, deadheading Bertram to Los Angeles, leaving Bertram 10:54 P. M., March 19th, arriving Los Angeles 6:20 A. M., March 20th, 1938.

Bertram was a one man telegraph office immediately prior to the emergency conditions which caused the position filled by Claimant Hoene to be established.

Bertram is located on the Los Angeles Division, Salton Subdivision, 63.2 miles east of Palm Springs, (EXHIBITS "E" and "L"), 107.8 miles east of Colton, (EXHIBITS "E," "G," "J" and "M"), 84.8 miles east of Beaumont, (EXHIBIT "F").

The position was opened because of the then existing emergency and closed when the emergency ceased to exist.

We quote excerpts from EXHIBITS "E," "F," "G," "H," "I," "J," "L" and "M," establishing the emergency conditions which caused the establishment of this position at Bertram:

EXHIBIT "E"—

"Los Angeles River still rising . . . two girders first crossing bridge at Dayton Avenue collapsed into river . . . bank of river cutting within 20 feet first track Taylor yard . . . 220-foot wooden structure at Wahoo washed away . . . Alhambra Avenue roundhouse and shop yards out of commission due to depth of water . . . Eaton wash breaking through several places . . . two feet of water in Colton yard . . . one abutment of bridge at Savanna washed out." (Savanna is near Bassett, Exhibit "E") . . . "considerable apprehension about Pacoima, San Gabriel and Tujunga dams. . . * * *"

at Bertram constituted being used at a similar emergency office. The burden of proof is on the petitioner to establish that this question should be answered in the affirmative, which it cannot do.

It has been the carrier's consistent and proper position that the establishment of an additional telegrapher position at Bertram during the period involved in this claim would not make Bertram an emergency office.

Applicable rates of pay for services performed by telegraphers assigned to the Bertram station are established by the current agreement (see paragraph 1, carrier's statement of facts). The first telegrapher's position at Bertram is not operated continuously but is operated temporarily during certain periods when, because of increased traffic, it is necessary to assign a first telegrapher thereto. At no time in the past has the petitioner contended that the carrier did not have the right to temporarily assign a telegrapher or telegraphers at Bertram and to compensate them at the agreement rate.

How the petitioner will distinguish between the operation of the Bertram station in the past when a first telegrapher was assigned thereto to assist in the handling of increased traffic and the operation of the station during the period March 10 to 19, inclusive, 1938, is beyond the comprehension of the carrier. The petitioner must admit that the use of Extra Telegrapher Hoene at Bertram between March 10 and 19, inclusive, 1938, was solely for the purpose of assisting in the movement of increased traffic.

Further, it is an established principle that a derailment at, or in the immediate vicinity of a regularly established telegraph office and because of such an 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."

Bertram was, prior to March 8, 1938, operated with a telegrapher assigned thereto from 5:00 P. M. to 2:00 A. M., with one-hour meal period (see paragraph 2, carrier's statement of facts).

The factual situations 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 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 2106, Docket TE-2083
Award 2107, Docket TE-2093
Award 2108, Docket TE-2094
Award 2109, Docket TE-2095
Award 2110, Docket TE-2097

Award 2111, Docket TE-2098
Award 2112, Docket TE-2099
Award 2113, Docket TE-2101
Award 2114, Docket TE-2102
Award 2115, Docket TE-2103
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