

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 R. C. Sheldon, Los Angeles Division, be compensated under the provisions of Rule 10 of the Telegraphers' Agreement and that certain Memorandum of Understanding dated San Francisco, Calif., January 3, 1938, on account of services performed at Bertram, Los Angeles Division, September 5 to September 22, 1939, inclusive.

EMPLOYEES' STATEMENT OF FACTS: Claimant, Telegrapher Sheldon, was ordered by proper authority September 5th, 1939 to proceed to Bertram by using train No. 2 out of Los Angeles, also being advised at the same time he was so ordered that an emergency existed as the Line was washed out east of Indio.

Claimant arrived Bertram by use of Greyhound bus and train at 11:10 P. M., September 5th, 1939, on duty Bertram 12:01 A. M., September 6th, 1939. Bertram was closed as a telegraph office July 31st, 1939 and reopened September 6th, 1939 as an emergency office account storm conditions causing numerous washouts. When the emergency condition ceased to exist the office was closed, September 22nd, 1939.

POSITION OF EMPLOYEES: An agreement exists between the parties to this dispute and is on file with the Board.

EXHIBITS "A" to "M" are made a part of this submission.

The claim is prosecuted under Rule 10 and the Memorandum of Understanding dated January 3, 1938. We quote Rule 10 and Sections 1 to 4 of the Memorandum:

"RULE 10

Emergency Service

"(a) Regular telegraphers taken from their assigned positions to be used at derailments, washouts, or similar emergency offices, will receive salary of regular position, but in no case less than .8175 per hour. Extra telegraphers when used in similar service will receive .8175 cents per hour.

"(b) Nine (9) consecutive hours including a meal hour will constitute a day's work in such service. The Company will provide shelter, board and lodging without charge.

instant case to the question of whether Extra Telegrapher Sheldon's temporary assignment 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 Bertram station, during the period September 6 to 22, inclusive, 1939, was a temporary office and not an emergency office. This is not a subtle distinction. It is true that all emergency offices are also temporary offices but all temporary offices are not emergency offices. The petitioner could not and would not contend that the Bertram station, while operated to handle increased traffic during certain periods, was an emergency office, but would have to admit that during such periods it was a temporary office; in other words, an emergency office coming within the purview of Rule 10 is properly defined as an office established or opened at the scene of or in the immediate vicinity of a derailment, washout, landslide, fire, snowslide or similar catastrophe or emergency and used in direct connection with the said catastrophe or emergency. The Bertram station during the period September 6 to 22, inclusive, 1939, does not come within this definition of an emergency office.

Applicable rates of pay for services performed by telegrapher when assigned to the Bertram station, are established by the current agreement (see paragraph 1, carrier's statement of facts). 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 the said telegrapher or telegraphers in accordance with the rate in the current agreement. The petitioner must admit that the use of Extra Telegrapher Sheldon at Bertram between September 6 and 22, inclusive, 1939, was solely for the purpose of assisting in the handling of increased traffic over the carrier's line between Los Angeles and Yuma. How the petitioner will distinguish between the operation of the Bertram station in the past, when a telegrapher or telegraphers were assigned to assist in the handling of increased traffic, and the operation of the station during the period September 6 to 22, inclusive, 1939, is beyond the comprehension of the carrier.

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.

CONCLUSION

The carrier having completely established that it properly compensated Extra Telegrapher Sheldon for deadheading to and from Bertram and for services performed at Bertram for the period September 6 to 22, inclusive, 1939, respectfully asserts that 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 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, 1943;

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, 1948.

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