

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 M. C. Walker, Tucson Division, be compensated under the provisions of Rule 10 of the Agreement and that certain Memorandum of Understanding dated San Francisco, Calif., January 3, 1938, for services performed at Dome, Tucson Division, September 7 to 13th, inclusive, 1939.

EMPLOYEES' STATEMENT OF FACTS: Claimant Telegrapher Walker was ordered to and did open the closed telegraph office at Dome, Tucson Division and performed service thereat September 7th to 13th, inclusive, 1939, this service being of a temporary and emergency nature made necessary because of emergency conditions consisting of floods, washouts, damaged tracks and roadbeds causing excessive and unusual delays to traffic, complete stoppage of traffic at intermittent periods and detouring of traffic because of the emergency conditions. When the emergency ceased to exist, the position was abolished and the office closed. The emergency conditions extended over a wide area in California and Arizona.

We quote from the Southern Pacific Bulletin of September, 1939:

"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 3:00 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 Brawly 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.

emergency, and used in direct connection with the said catastrophe or emergency. The Dome station, during the period September 9 to 15, inclusive, 1939, does not come within this definition of an emergency office.

Applicable rates of pay for services performed by telegraphers when assigned to the Dome station are established by the current agreement (see paragraph 2, 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 Dome, and to compensate the telegrapher or telegraphers in accordance with the rate in the agreement.

The petitioner must admit that the use of Extra Telegrapher Walker at Dome during the period September 9 to 15, inclusive, 1939, was solely for the purpose of assisting in the handling of increased traffic. How the petitioner will distinguish between the operation of the Dome station in the past, when a telegrapher or telegraphers were assigned thereto to assist in the handling of increased traffic, and the operation of the station during the period September 9 to 15, 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 Walker for services performed at Dome during the period September 9 to 15, 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 hearings 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