

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 J. L. Burton, Tucson Division, be compensated under Rule 10 of the Telegraphers' Agreement and that certain Memorandum of Understanding dated San Francisco, Calif., January 3, 1938, for services performed at Buckeye, Tucson Division, September 8, 9, 10 and 14, 1939.

EMPLOYES' STATEMENT OF FACTS: Claimant Telegrapher J. L. Burton, Tucson Division, was ordered to and did perform service at Buckeye, Tucson Division, September 8, 9, 10 and 14, 1939, this service being of a temporary nature made necessary because of emergency conditions consisting of floods, washouts, damaged tracks and road beds causing excessive and unusual delays to traffic, complete stoppage of traffic for intermittent periods and detouring of traffic because of the emergency conditions. 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 Brawley 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.

"Powerful bulldozers, similar to those which played such a vital part in rehabilitating the storm-swept lines in southern California in

It has been the carrier's consistent and proper position that the establishment of an additional telegrapher position at Buckeye on September 8, 9, 10 and 14, 1939, did not thereby make Buckeye an emergency office.

Applicable rates of pay for services performed by telegraphers assigned to Buckeye station are established by the current agreement (see paragraph 1, carrier's statement of facts). The third telegrapher position at Buckeye is not 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 third telegrapher at Buckeye and to compensate him at the agreement rate.

The petitioner must admit that the use of the third trick telegrapher at Buckeye on September 8, 9, 10 and 14, 1939, was solely for the purpose of assisting in the movement of increased traffic. How the petitioner will distinguish between the operation of the Buckeye station in the past, when a third telegrapher was assigned thereto to assist in the handling of increased traffic, and the operation of the station on September 8, 9, 10 and 14, 1939, 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."

Buckeye was, prior to September 8, 1939, operated with an agent-telegrapher assigned thereto from 6:45 A. M. to 2:45 P. M. and a second trick telegrapher assigned thereto from 2:45 P. M. to 10:45 P. M. (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 claim, 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 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 employee involved in this dispute are respectively carrier and employee 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