

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Henri A. Burque, 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, Pacific Lines, that for service performed enroute to and from, and while at Glamis, Los Angeles Division, September 7 to 18, inclusive, 1939, Telegrapher Frank A. Cabot be compensated under Rule 10 of the Current Telegraphers' Agreement and under that certain memorandum of understanding pertaining thereto, dated San Francisco, California, January 3, 1938.

EMPLOYEES' STATEMENT OF FACTS: On account of the existence of emergency conditions, Telegrapher Cabot was ordered to deadhead Los Angeles to Glamis, Los Angeles Division and after deadheading performed service as set forth in EXHIBIT "A," deadheading back to Los Angeles, Division headquarters, when the emergency conditions ceased to exist.

Glamis is located on the Los Angeles Division 87.2 miles east of Indio, 34.6 miles west of Yuma, eastern terminus of the Los Angeles Division and within the limits of the troubled area as we will show by quotations from the Southern Pacific Bulletin of September, 1939: (Page 4)

"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.

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 as to bring it within the purview of Rule 10. In Award 1493, this 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."

Glamis prior to September 7, 1939 was operated with a telegrapher assigned thereto from 11:00 P. M. to 8:00 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 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: We are called upon to once more pass upon the applicability of a rule interpreted on different occasions by the Board on this Division with and without referees.

Both parties are frank in admitting the present controversy is for the purpose of determining which line of thought the present referee will adopt. It is always regrettable for a referee to find himself confronted with precedents that do not agree. There are two very divergent views expressed as the result of reasonings and findings of the referees who have previously dealt with the problem, so that the principle of stare decisis cannot be applied. The task of determining which of these precedents shall be followed is not an easy one. Careful and intensive study has been made of all the Opinions cited, as well as of the dissents.

We will first enunciate what we think is the best authority on the subject. We prefer to follow the majority of the Opinions which have sustained the claims, considering the ones where the emergency service was required to be performed at established open permanent offices, as in this docket, and we will quote from some of the Opinions to give the reasons that prompt us to follow them.

First, Award 130, Opinion rendered without a referee. Due to a slide, a derailment occurred necessitating the service of extra operators at an already established office in order to provide continuous telegraph service, and the Board said:

"The addition of one or more shifts of telegraph and/or telephone service at a station where an agent or operator is regularly assigned does not thereby create an 'emergency office' within the meaning of

Rule 21, Article 5, of the Agreement cited, but in the light of the facts and circumstances in this case as jointly certified by the parties, the Third Division finds for petitioner."

This was an Illinois Central case, but the rule is similar to the one on the Southern Pacific.

The next one is Award 923, Referee Swacker. Due to a washout, extra work by an extra telegrapher at a regularly established office was required to cover a third trick. After stating that the rule applies to extra telegraphers as well as regular telegraphers required to perform emergency service, the Opinion goes on to say: (Citing Award 130)

"Addition of a shift at an open station does not thereby create an 'emergency office'; we do not, however, perceive any particular facts and circumstances in this case which would justify us in holding that the establishment of the extra tricks at these stations made 'emergency offices' of them."

The claim was denied on this account. This was a Chicago, Rock Island and Pacific; and Chicago, Rock Island and Gulf Railways case.

We now come to the Southern Pacific cases. Award 395, Referee Sharfman:

"There is no denial that the office at Flanigan was an emergency office, nor that slides, which are obviously similar to derailments and washouts, were the effective cause of its derailment. * * * No requirements as to the locus of the slides or as to interruptions of traffic are stipulated in the rule as conditions of its applicability. The essential element, which provides opportunity for the service and compensation at issue, is the emergency office. * * * Nor is there merit to the contention that the office must be located at the exact point of the derailment, washout, or similar difficulty. It has been soundly held by this Division that the practical demands of the situation must govern with respect to the place chosen for emergency operations; and since the office here involved was located at the nearest junction point at which the Western Pacific trains might be detoured and emergency telegraph service was required, the causal connection between the slides and the emergency office was not broken in any way."

Though the facts in the above case differ from those in the confronting case, in that a closed office was reopened for the purpose of doing the work groups it in the same category as TE-2282, we have cited and quoted it because we feel the referee would have reached the same conclusion if the work had been performed in an already regularly open office. We base this view on the reasoning of the referee. Here, for the first time, we encounter the "causal connection" theory between the trouble and the emergency, and of this, more later.

We then come to the consideration of Award 1322, Referee Rudolph. Here we have a set of facts similar to the facts in the confronting case, in that the emergency service was performed in an already existing office. Floods caused trouble and two temporary additional telegraphers' positions were established in an existing office. Referee Rudolph says:

"Reason will not justify an arbitrary holding that simply because a station has an agent-telegrapher, there might not be established at that station an emergency office within the meaning of Rule 10. * * * We must look to the 'facts and circumstances' as disclosed by this particular record and determine whether the establishment of the extra tricks at Carpinteria created 'emergency offices' within the meaning of Rule 10."

The Opinion then comments on the fact that the office does not have to be located at the exact point of the derailment, etc. (citing Award 395), and that though the flood had subsided and traffic had been resumed, trains were being detoured and an emergent and serious condition still existed due to the floods of the preceding days, and concludes: "There is a direct causal connection between the floods and the establishment of the extra tricks."

Here, for the first time, the Carrier Members of the Division filed a dissent, to which they have adhered ever since whenever the Division has sustained the claims.

This was followed by Award 1323, same referee, and though it is a case of a closed office being reopened for emergency caused by slides and danger of future ones, which necessitated the discontinuance of traffic on the east track nearest to the hillside and handling traffic over the west track only, thus placing it in the same group as TE-2282, we cite it because again we feel the referee would apply the same reasoning as he did in Award 1322, where the facts differ as we have seen:

"Carrier contends that the establishment of the office at Crystal Lake was simply to take care of unusual traffic in the same sense that offices are established on a 'seasonal basis' to take care of traffic. We are unable to agree with this contention. The record discloses that due to slides and danger of slides it was necessary to operate a single track from Emigrant Gap to Crystal Lake. The slides and constant danger of slides are obviously similar to derailments and washouts, and within the meaning of Rule 10. Cf. Award No. 395. The office was established to meet the conditions caused by the unprecedented snow fall which necessitated emergency telegraph service. 'Constant danger of snowslides' as set forth in the letter of Mr. Tracy certainly constituted an emergent condition which required prompt action on the part of the carrier, and as long as this danger remained the emergency continued. We think it clear that Crystal Lake was an emergency office within the meaning of Rule 10."

Award 1979, Referee Bakke. The facts are similar to the ones in the instant case. There the referee says (referring to Award 1322):

"This so-called theory is simply another way of saying when did the emergency end. We say 'when' because it is definitely established that the emergency service does not have to be rendered at the exact physical location of the emergency, so we do not in this case need to ask 'where' does the emergency end.

"We do not agree with the idea that a regularly established telegraph office may not be an emergency office. A very great deal depends upon the emergency, and it might be well to have a definition of that word in mind as we proceed. Emergency is defined as 'a sudden or unexpected occurrence or condition calling for immediate action, a perplexing and pressing combination of circumstances' (Funk & Wagnall's New Standard). * * *

"* * * The rule requires an interpretation commensurate with the service and the emergency.

"The carrier need not be gravely concerned as to when the emergency ends. It can determine that by the time it lets the men go back to their homes, that is when the emergency ends for them.

"* * *

"The carrier argues that allowances of extra pay to the claimant in this case results in a discrimination in his favor over the men regularly employed at the office. The rule anticipates that in the language 'Regular telegraphers taken from their assigned positions' and used

at emergency offices shall receive extra compensation. The last sentence of paragraph (a) of the rule puts the extra telegrapher in the same category. * * *

"In conclusion we adopt the concluding paragraph of Award 1322 (immediately preceding the Findings) by substituting 'Chatsworth' for 'Carpinteria'."

Awards 1980, 1981 and 1982 follow, all to the same effect. Referee Rudolph's first Opinion was rendered in January, 1941. He came back on the Division and rendered further decisions in March, 1943. The rule involved was again this same Rule 10 and he then said (Award 2105):

"We adhere to the views expressed in the Opinions in Awards 395, 1322, 1323, 1979, 1980, 1981, and 1982,"

and added:

"This construction is confirmed by the carrier's own practice in effecting settlements on other occasions. It also appears that on January 3, 1938, the parties entered into a supplemental agreement relating to Rule 10. This supplemental agreement was made some months after the rule was construed by this Division in Award 395 and no exception having been taken to Award 395 in the supplemental agreement, its language must be read in the light of that Award."

This referee adopts the views expressed in the above awards. The theory of causal connection is a most plausible and practical one. All we have to do is to ask ourselves this question: Is there connection between cause and effect? If the answer is yes, the rule applies; if the answer is no, the rule does not apply. The answer is controlled by the facts in the case. E. g., trouble occurs, whether it be derailments, washouts or similar happenings, and traffic is disorganized. Immediate additional service is required to be performed until traffic conditions have been restored to the point at least where regular employees can take care of the situation. Certainly no other conclusion can be reached, but that there is a situation of cause and effect; and the service cannot be called anything else but emergency service. It can make no difference whether that service is performed at an emergency station set up for that purpose or in an office already in existence, where regular work is performed. It is the service that is required, wherever it is most convenient and expeditious to be performed, at or near, or even at a point remote from the scene of the cause of the emergency.

The problem then resolves itself simply in the determination of a factual question and should not be perplexing nor difficult of solution. Far from producing "repercussions which it would be impossible to measure or foresee and . . . inevitably lead to disputes and misunderstandings of a far-reaching nature," as said by Referee Shaw in Award 1493, its effect should be to remove all possibilities of such a result and help to solve disputes on the property.

All that remains for us to do, therefore, is to study the facts and circumstances in the confronting case and see if there was an existing emergent condition necessitating emergency service.

As a result of heavy rains between September 3rd and 6th, inclusive, 1939, the Carrier's line and service between Indio and Yuma were intermittently disrupted. The service was resumed September 7th, but due to the interruption, traffic had become congested and backed up. The services of two additional extra telegraphers were required at Glamis to help handle that traffic until such time as conditions were relieved and movements of trains could be taken care of by regular telegraphers. Glamis was a regularly open and existing telegraph office, manned by regular operators. Claimant was one of two extra men sent to Glamis, working there from September

7th to 18th, inclusive, at which time his services at that station were dispensed with. It is eminently clear that his service was emergency service, necessitated by the emergent condition caused by the floods, which emergent condition continued until such time as traffic was restored to its normal or near normal status, and so far as the Claimant was concerned, until the Carrier dispensed with his services and took him off the property. There is no question but that the Carrier kept him there because his services were required. Nothing in the record would warrant a contrary finding. The inevitable conclusion is that his services were required or else he would not have been kept on the position.

Awards where claims coming under this rule, or some similar rules, have been denied, are the four participated in by Referee Shaw, and Award 923, Referee Swacker. As is well said in Award 1322, all that is to be found in Award 923 is that the Division did not perceive any particular facts and circumstances in that case which would have justified a holding that the establishment of extra tricks at established stations made emergency offices of them; clearly implying that the facts or circumstances might create an "emergency office" at an open station when extra tricks are added; and Award 1978, Referee Bakke, where he says: "We think this record shows that Purdin's employment at Fields was a temporary, seasonal service, not precipitated or caused by any emergency, and that Rule 10 has no application." In Award 1979, Referee Bakke makes it clear that his statement to the effect, "The Carrier need not be gravely concerned as to when the emergency ends," is not inconsistent with the conclusion reached in Award 1978, because in light of the above-quoted definition (meaning definition of "emergency"), there was no emergency in that case. It, therefore, becomes clear that this award, as well as other awards, except those participated in by Referee Shaw, are based upon a final analysis of the factual situation of the individual case, and where "causal connection" exists, Rule 10 applies.

This Opinion disposes particularly of cases in Dockets TE-2284, TE-2285, TE-2286, TE-2287, TE-2288, TE-2333, TE-2334, TE-2335 and TE-2336.

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 3rd day of December, 1943.

Dissent to

Award 2403—Docket TE-2281	Award 2408—Docket TE-2287
Award 2404—Docket TE-2282	Award 2409—Docket TE-2288
Award 2405—Docket TE-2284	Award 2410—Docket TE-2333
Award 2406—Docket TE-2285	Award 2411—Docket TE-2334
Award 2407—Docket TE-2286	Award 2412—Docket TE-2335
Award 2413—Docket TE-2336	

These Awards err in their adoption of extreme implications from certain prior awards which have followed a theory of causal connection in interpretation and application of Rule 10, Emergency Service.

This rule by its express and unambiguous terms, considered in the light of realism and practical knowledge, is confined to telegraph service at the scene of derailments, washouts, or similar emergency offices opened temporarily to deal with those emergent conditions. The rule does not comprehend telegraph service which the Carrier elects to continue or add otherwise to counteract results or conditions which, because of remote relation, may thus be said to have a so-called causal connection with the emergency.

Reference is made to our dissents in the prior awards which are considered in the Opinion of confronting Award 2403, Docket TE-2281.

R. F. Ray
A. H. Jones
C. P. Dugan
R. H. Allison
C. C. Cook