

**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 Company, Pacific Lines, that Telegrapher John Carlson, Sacramento 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 Canby, Sacramento Division, February 28 to March 6, inclusive, 1940.

EMPLOYES' STATEMENT OF FACTS: The factual situation is covered by the Carrier's publication, The Southern Pacific Bulletin of April, 1940, from which we now quote:

**"HEAVY TOLL WHEN FLOODS HIT SACRAMENTO
VALLEY LINE**

Upholding the railroad tradition that 'freight and passengers must be kept moving,' Southern Pacific forces successfully met a major emergency when torrential rains fell in northern California as February drew to a close, and again triumphed over storms in a brief but violent return of flood conditions to the same area at the end of March.

Heavy rains which had been falling almost steadily for several days began to take their toll on February 26 when a rock and mud slide buried 200 feet of track at Pollock, about 15 miles north of the Shasta Dam site, derailing five freight cars and blocking the Shasta Route main line. For the next two days reports of washouts, slides, submerged tracks and other destruction to property poured in from many sectors of northern California, and when the flood waters had abated sufficiently to permit a survey of the stricken areas it was found that Southern Pacific had suffered property damage of approximately \$400,000.

The major portion of the damage was centered in three districts: (1) between Cantara, six miles north of Dunsmuir, and Redding on the Shasta Route; (2) between Gerber and Marysville on the East Side, Tehama and Woodland on the West Side main lines and a number of branch lines; (3) between Vasona Junction and Santa Cruz on the San Jose-Santa Cruz branch of Coast Division. In addition, reports of damage were received from many scattered points on the Coast and Western Divisions.

At no time in the past has the petitioner contended that the carrier did not have the right to temporarily assign a second telegrapher at Canby and to compensate him at the agreement rate.

How the petitioner will distinguish between the operation of the Canby station in the past when a second telegrapher was assigned thereto to assist in the handling of increased traffic and the operation of the station during the period February 29 to March 5, inclusive, 1940, is beyond the comprehension of the carrier. The petitioner must admit that the use of the second telegrapher at Canby between February 29 and March 5, 1940, was solely for the purpose of performing regular telegraph duties in the movement of increased traffic.

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."

Canby, prior to February 29, 1940, was operated with an agent-telegrapher assigned thereto from 9:00 A. M. to 6:00 P. 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: This claim is governed by Docket TE-2281, Award No. 2403.

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 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