Award No. 2408
Docket No. TE-2287

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 R. G. Moore be compensated under Rule 10 of the agreement in effect and that certain Memorandum of Agreement dated January 3, 1938, for services performed at Bassett, March 8 to April 1, inclusive, 1938.

EMPLOYES' STATEMENT OF FACTS: Due to heavy storms and flood conditions resulting in washed out bridges and trackage, Telegrapher R. G. Moore was ordered to perform service at Bassett, Los Angeles Division, on March 8th and performed service from 4:00 P. M. to 12 Midnight, daily, March 8th to and including April 1st, 1938.

Bassett is located on the Pomona subdivision of the Los Angeles Division at mile post 497.3. Normally is manned by an Agent-telegrapher but in this emergency condition, additional telegraphers were required to afford continuous service.

Traffic through Bassett on the Pomona subdivision is operated on single track. Bassett is also the junction point on the west for the Covina Branch. This branch line extends from Bassett through Covina to Pomona, where it again joins the main line from Los Angeles to Colton. Bassett is 15.4 miles from Los Angeles and 41.7 miles from Colton.

We quote from EXHIBITS "E," "G" and "H," excerpts which will give ready reference to factual material as to emergency conditions obtaining:

EXHIBIT "E"—

"Los Angeles: Double-track bridge over L. A. River collapsed; 200 feet of embankment approach to Arroyo Seco Bridge washed out; river bank cut back up to 80 feet at Taylor Yard undermining tracks."

"Bassett: Two trestles to west over San Gabriel River and Eaton Wash, and others badly damaged."

"Branch lines: Extensive damage throughout area; Roadbed undermined and side cut: Necessary restore many washed out trestles."

"Colton: Lytle Creek cut channel 200 feet wide through yard, undermining tracks; yard covered with sand over one foot deep; 315 feet of Santa Ana River trestle and 135 feet of embankment washed out."

telegrapher-clerk at Bassett between March 8 and April 1, 1938, was solely for the purpose of performing regular telegraph clerk 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."

Bassett, prior to March 8, 1938, was operated with an agent-telegrapher assigned thereto from 9:00 A. M. to 6:00 P. M. with 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, predicating 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 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 2404—Docket TE-2282
Award 2405—Docket TE-2284
Award 2406—Docket TE-2285
Award 2407—Docket TE-2286
Award 2408—Docket TE-2287
Award 2409—Docket TE-2288
Award 2410—Docket TE-2333
Award 2411—Docket TE-2334
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