

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 C. J. Smith be compensated under Rule 10 of the Telegraphers' Agreement account service performed at Yuma, Tucson Division, September 9th to 15th, inclusive, 1939.

EMPLOYES' STATEMENT OF FACTS: Claimant Smith was ordered to deadhead Bowie, Tucson Division to Yuma, Tucson Division, to work a position established at Yuma because of emergency conditions consisting of floods, washouts, damaged track and road bed causing excessive and unusual delays to traffic, complete stoppage of traffic for intermittent periods and detouring of traffic because of emergency conditions. The emergency conditions extended over a wide area in California and Arizona.

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

"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 lay-over 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 March 1938, were pressed into service and, with every available extra gang and bridge gang rushed to the damaged areas, the line was reopened at 9:00 A. M. on September 7.

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 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