

PUBLIC LAW BOARD NO. 2946

Award No. 67

Case No. 67

Parties United Transportation Union (C&T)  
to and  
Dispute Southern Pacific Transportation Company (Eastern Lines)

Statement of Claim: Protest and claim on behalf of brakemen T. W. Wittie and J. . Sigler, § San Antonio - Eagle Pass District, against the unwarranted and unjust discipline issued Brakemen Wittie and Sigler on unproven and improper charges when Brakemen Wittie and Sigler were suspended from service June 2, 1981 and claim for pay for all time lost June 2, 1981 through June 17, 1981, and pay for attending formal investigation June 8 through June 11, 1981.

Findings: The Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated May 29, 1981, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

On June 1, 1981, Claimants were working as brakemen on the Eagle Pass Road Switcher, on duty at 10:00 AM, Eagle Pass, Texas, on Carrier's San Antonio Division. Some time around 6:30 PM on same date, Carrier found itself short of available, rested road crews due to traffic congestion, and the Eagle Pass Road Switcher was requested to take a cut of approximately 140 cars to Spofford, to relieve congestion in the yard and expedite traffic. In addition, Claimants were requested to make a pick up on the Storage Track at Spofford and proceed to Eagle Pass. However, after making the set off as per the instruction of the

Dispatcher, who had previously conferred with the Trainmaster and Conductor Corzine, it was discovered that Claimants had shoved the cut into the designated siding, exceeding its capacity by about 30 car lengths, and had pushed out through a control switch causing damage thereto.

As a result of that incident, Claimants were notified, in pertinent part:

"You are charged with your responsibility for alleged failure to control shoving movement by a member of your crew conspicuously positioned on leading car, which may be a violation of Rule 830; for alleged failure to stop short of absolute signal displaying stop indication at West end of siding and for moving past signal without proper authority, which may be a violation of Rule 776; for alleged failure to stop movement short of improperly lined dual-control switch, resulting in switch being run through and damaged, which may be a violation of Rule 104; for allegedly allowing movement to enter main track without being authorized by absolute signal indication or by permission by train dispatcher, which may be a violation of Rule 763; for alleged failure to stop movement short of crossing at grade and alleged failure to have member of crew take position at crossing for protection, which may be a violation of Rule 836; for alleged failure to obtain authority or provide protection for cars left on main track, which may be a violation of Rule 830; of the Rules and Regulations of the Transportation Department, Southern Pacific Transportation Company, resulting in delays to important expedited trains while working as brakeman, Eagle Pass Road Switcher, Spofford, Texas on June 1, 1981."

The scheduled investigation was postponed and subsequently held on June 8, 1981. As a result thereof, Claimants received notification over the signature of Superintendent R. G. McWirrter, under date of June 15, 1981, in pertinent part:

"For failure to control shoving movement by a member of your crew conspicuously positioned on leading car, which is a violation of Rule 836; for failure to stop short of absolute signal displaying stop

indication at West end of siding and for moving past signal without proper authority, which is a violation of Rule 776; for failure to stop movement short of improperly lined dual-control switch, resulting in switch being run through and damaged, which is a violation of Rule 104; for allowing movement to enter main track without being authorized by absolute signal indication or by permission by train dispatcher, which is a violation of Rule 763; for failure to stop movement short of crossing for protection, which is a violation of Rule 836; for failure to obtain authority or provide protection for cars left on main track, which is a violation of Rule 830; of the Rules and Regulations of the Transportation Department, Southern Pacific Transportation Company, resulting in delays to important expedited trains while working as brakeman, Pass Road Switcher, Spofford, Texas on June 1, 1981, you are suspended from service for fifteen (15) days, effective June 2, 1981. You may report for duty June 17, 1981."

From that determination of guilt and resultant discipline, Organization appeals.

The applicable schedule rules, in pertinent part, read:

"104. Trainmen (enginemen if no trainmen) are responsible for proper setting of hand-operated switches and derails to be used by their train or engine, and for their return to proper position after use.

When spring switches or dual control switches are operated by hand, they are considered hand-operated switches within the meaning of this rule.

A main track switch must not be lined by an employee for train or engine movements other than their own until movement has been identified or it is known that approaching movement is to use turnout.

763. A main track or controlled siding must not be fouled unless authorized by absolute signal indication or by permission from train dispatcher. Certain main track hand-operated switches are equipped with electric switch locks. Train dispatcher's permission must be obtained before door on high-type switch lock is opened, or before switch lock is removed from keeper of low-type switch lock.

Before granting authority to enter main track or controlled siding at a hand-operated switch, train

dispatcher must protect movement by setting opposing absolute signals to display stop indication and applying control blocks. Blocks must not be removed until track is occupied and a complete understanding must be had with crew members as to direction and between what points movement is to be authorized.

776. When an absolute signal displays stop indication, train or engine must stop, and unless stop indication is known to be caused by approach of a train, member of crew must promptly contact train dispatcher.

(a) If signal cannot be cleared, train dispatcher may authorize train or engine to proceed on main track or controlled siding at RESTRICTED SPEED to next absolute signal, or to couple to their own train or car provided all of the following conditions are met:

- (1) There is no opposing or preceding train causing signal to display stop indication.  
EXCEPTION: Refer to Rules 767, 771 and 776(b).
- (2) Controls for switches are secured with control blocks and light(s) on dispatcher's control machine indicates dual control switches are locked in desired position for movement.
- (3) Time release feature is not operating.
- (4) Opposing absolute signal(s) are set to display stop indication and controls are secured with control blocks.

If dispatcher is unable to line switch to desired position, or if lights on dispatcher's control machine do not indicate dual control switch is locked, dispatcher must require that dual control switch be placed in hand position, switch opened and closed by hand, selector lever returned to motor (or power) position, and dispatcher notified. If signal cannot then be cleared, selector lever must be placed in hand position. Train then may be authorized to proceed. After entire movement has been made over switch, selector lever must be returned to motor (or power) position and locked and train dispatcher notified.

(b) When an absolute signal displays stop indication and a preceding train has not

passed the next absolute signal governing in the same direction, train dispatcher may authorize a FOLLOWING movement to proceed to next absolute signal on main track at RESTRICTED SPEED. Before doing so, he must assure himself that crew member on following movement understands there is a preceding train ahead. Crew member on following movement must notify his engineer.

Before proceeding under provisions of (a) or (b) authority granted must be repeated by crew member to train dispatcher, and if correct, response 'OK' will be given.

Before proceeding under provisions of (a) or (b), except when necessary to proceed with selector lever in hand position, member of crew must examine switch from the ground to see that switch points are in proper position for the movement, selector lever in motor (or power) position or switch machine crank in crank holder and locked. He must remain in vicinity of switch, but not closer than 20 feet, to be in position to observe switch points until leading wheels pass over switch.

Trains authorized to proceed at RESTRICTED SPEED under the provisions of (a) or (b), may pass AUTOMATIC BLOCK SIGNALS displaying stop indication without stopping, and may resume prescribed speed when rear of train passes block signal displaying other than stop indication.

830. Trains, engines or cars must not be left on main track without authority and/or protection.

836. When cars are being shoved in any switching movement, unless view of track ahead is seen to be clear for the entire distance to the point where movement will be stopped, member of crew controlling movement must take a conspicuous position on leading car to look out for obstructions and to afford warning signals to persons on or near track being used. Before entering a crossing at grade, unless a member of crew is on leading car or preceding the movement, movement must be stopped and member of crew must take position at crossing and give warning signals to persons or operators of vehicles approaching crossing.

OUTSIDE OF YARD LIMITS trains must not shove cars ahead of engine between stations when it can be avoided. When necessary to so handle, speed must not exceed 20 MPH and on descending grade, cars must

be chained to engine unless air brakes are cut in and operative on all cars. A member of crew must take a conspicuous position on leading end of car to observe signals affecting movement and to give warning signals to persons or operators of vehicles on right-of-way or approaching crossings."

The thrust of Carrier's case against these Claimants is founded on Carrier's belief that both Brakemen had full knowledge their train was too long to fit into the West siding at Spofford. Under date of August 5, 1981, Superintendent McWirrter denied the relief sought in the progression of the claim by the local Chairman stating, in pertinent part:

"... Mr. Wittie and Mr. Sigler have worked at Spofford and in the general area for a considerable period of time. Both were well familiar with the track capacity at Spofford and should not have been a party to shoving cars through the siding out on to the main track and leading them."

Organization points to the testimony of the Conductor both at the investigation, and his statements of exculpation made to the Trainmaster who made the preliminary inquiry into the circumstances of the incident at Eagle Pass where Claimants were removed from service on the day of the incident.

Conductor Corzine advised the Trainmaster that he had given specific instructions to one Brakeman to go to the Storage Track and prepare the pick up, had given the other Brakeman specific instructions to get the switch and pin off the engines after the signal was given to stop. He advised the entire crew that he would ride the cut back to protect the rearward movement. Without informing any member of the crew, Conductor Corzine got off three-quarters of the distance back in making the shove.

Engineer Day testified that the Conductor gave clear, distinct and continuous signals up to the time that he called for a stop. No one, including Conductor Corzine, knew that they had shoved through the other end of the siding and had damaged the switch and fouled the main line. The crew went about completing their assignment, pinned off the drop, picked up the cars off the Storage Track and were enroute to Eagle Pass when they learned, via radio, of what had occurred.

One of Carriers principle witnesses, Trainmaster Ryan, who conducted the preliminary inquiry, testified in pertinent part:

"Q - If Mr. Sigler was doing as he was instructed by the Conductor then he would not be responsible for Rule 836 and 776, Rule 104 and Rule 763, because what he was doing didn't involved those rules, did it?

A - By what he was doing, do you mean at the Storage Track?

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If after he received his instructions and discussed them with his conductor, his duties at the storage track would appear to remove them from the place of the violation.

Q - And wouldn't the same thing apply to Brakeman Wittie, also?

A - Under the same circumstances, having discussed the implications with the conductor, the same would apply.

Q - Mr. Ryan, in Mr. Corzine's statement to you, did he admit responsibility for the incident at Spofford?

A - Yes, he did.

Q - And did he indicate to you where his brakemen were and the duties that they were performing at the time this incident happened?

A - Yes, he did."

Elsewhere, Trainmaster Ryan testified:

Q - Mr. Ryan, when Mr. Corzine and the crew came up to talk to you because they left for Spofford, you discussed a plan with Conductor Corzine who to yard the train at Spofford. How did you and Conductor Corzine determine that the cars wouldn't fit West of the East leg of the wye?

A - We consulted the timetable and the diagrammatic sketch of Spofford, and prior to that the Chief Dispatcher had been contacted.

Q - Then the three of you determined that they would fit West of the East leg of the wye, is that correct?

A - That is ... correct. All we determined was the siding capacity and the physical layout.

Q - What did you tell the dispatcher, McKenzie, where Conductor Corzine's intentions were when you called him?

A - I told Dispatcher McKenzie how many cars were in each block, total tonnage and Conductor Corzine's intentions to set the train out in Spofford.

Q - Mr. Ryan we knew what Conductor Corzine's intentions were to set the train out at Spofford. We would like to know if you told Dispatcher McKenzie?

A - Dispatcher McKenzie indicated that we should use the siding.

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Q - Did the dispatcher decide to put the cars away in the control siding at Spofford?

A - The dispatcher decided for his own purpose it was best to put the cars in Spofford. That was mentioned in a separate conversation."

There was an exhaustive record of this investigation, which consisted of 97 pages plus exhibits. However, nowhere was there any testimony that the Claimant Brakemen were involved in the shove through the rear of the siding and leaving cars fouling on the main. Conductor Corzine gave them specific instructions on what to do and where to do

it; Claimants carried out those instructions. They were not privy to the discussions between the Dispatcher, Conductor and the Trainmaster. We fail to see how Claimants could be held culpable for the cited rules, except on the basis of "...guilt by association...". Clearly, there was no factual basis to support a conclusion that they did anything to violation the cited rules. Even in the letter of discipline, which was basically framed to address the Conductor, there is no immediate reference to the Claimants' activities.

On the record before us we must conclude that Claimants discipline was arbitrary and capricious and not support by the facts. Accordingly, this claim will be sustained.

AWARD: Claim Sustained.

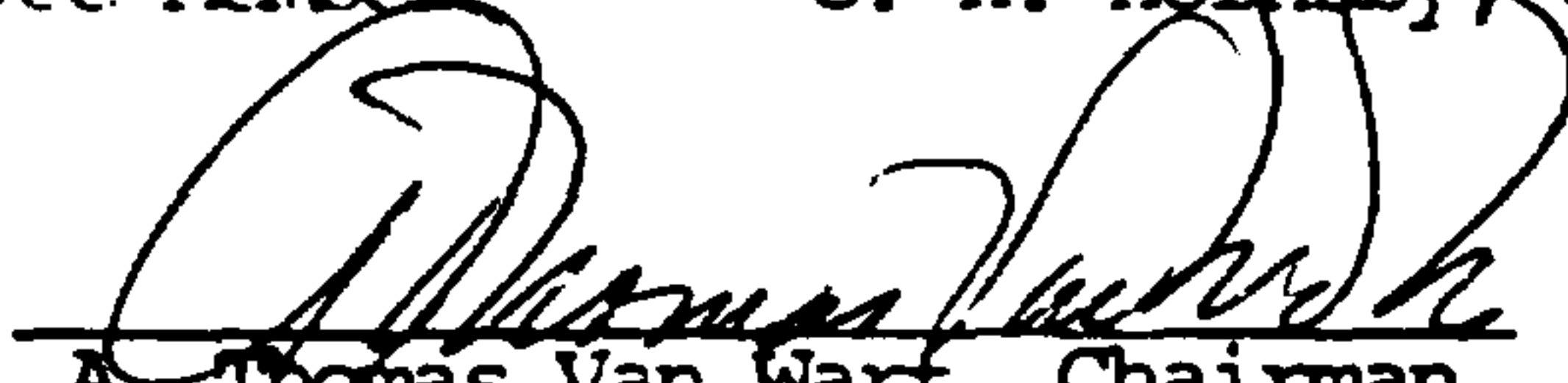
ORDER: This Award will be made effective within 30 days of date of issuance hereof.



G. T. Dubose, Employee Member



C. H. Hobnsby, Carrier Member



A. Thomas Van Wart, Chairman  
and Neutral Member

Issued: SEP 5 1984