

PUBLIC LAW BOARD NO. 4183

Raymond R. Hawkins
Chairman and Neutral Member

C. L. Little
Employee Member

R. P. Guidry
Carrier Member

Award No. 4
Case No. 15

PARTIES TO DISPUTE:

United Transportation Union (E)

and

Southern Pacific Transportation Co.

STATEMENT OF CLAIM:

Claim of Engineer J. D. Nutt for 100 miles each date July 10, 23 and 25, 1985 account ice and water not available at Denison, Texas.

FINDINGS OF FACT:

The Board finds that the employee and carrier are employee and carrier within the meaning of the Railway Labor Act, as amended, and that the Board has jurisdiction of the dispute which follows; the parties filed ex parte submissions, and after due notice participated in a hearing in Houston, Texas on January 19, 1987.

Claimant is assigned to pool freight service operating from Ennis, home terminal, to Denison, and return. On arrival at Denison the crew is transported to a motel at Sherman for their layover. On the return trip the crew is transported from the motel to their on duty point at Denison.

On or about May 1, 1985, the ice making machine at Denison became inoperative but was not repaired. On May 10, 1985 the UTU(E) Local Chairman notified the Superintendent in writing that ice and water was not being supplied to crews at Denison and that claims were being processed. He further request the Superintendent to do something to remedy the situation. The superintendent replied on May 20, 1985 stating:

Effective immediately, the clerk who hauls the crew from the motel at Sherman to on-duty point at Denison, will have ice and water in the carryall and turn it over to the engineer who will supply his engine at Denison rather than Sherman.

On August 28, 1985, the Local Chairman again wrote to the Superintendent informing him that his instructions were not being complied with and accordingly he submitted the claims set forth above.

The rules in issue are:

ARTICLE 28

Sec. 5. All locomotives will be equipped with a sanitary water cooler (mechanical or ice cooled), provided with a faucet, drinking cup dispensers and paper cups the year around.

When starting a trip or day's work, water and in the absence of a mechanical cooler, ice will be handled by other than engineers where persons other than engineers service, supply or make engines ready for service and, at other locations, engineers may, at their own options, handle the ice and water which will be available to them.

AGREEMENT OF AUGUST 23, 1984

Section 1. An adequate supply of ice and drinking water in sanitary, sealed, individual containers will be provided for cabooses and engines for trainmen and enginemen while on duty.

The Organization asserts that the issue here is that claimant was unable to supply the ice and water at Denison because the carrier failed to make them available. In support, the Organization cites Awards 12, 13 and 15 PLB No. 2791 (Weston) and Award 11, PLB no. 3822 (Quinn) sustaining claims in the amount of 100 miles in instances where ice water was not provided for road crews.

The carrier maintains that Article 28 was not violated because claimant knowing that ice and water was no longer available at Denison, he should have picked up the ice and water at his motel and transported it in the carryall to Denison. It asserts that Article 28, Section 5 allows the engineer to supply his engine where mechanical forces are not available, and that the article does not provide for a 100 mile penalty. Further, the carrier cites Award 8 of PLB no. 2984, under an identical situation as this one which denied the claims.

An examination of the denial award cited by the carrier does not support its allegation that the facts in that case were identical to in instant case. In that award it was found that:

...while the carrier has the initial and primary responsibility to furnish ice and water, claimant may not intentionally, under the circumstances, encourage a violation of the rule... If the claimant had made a claim for, or if he had advised the carrier of the rule violation on May 22, 1980, further rule violation on May 28, 31 and June 4, 1980, would not have occurred.

In the instant case, however, the record reveals the organization notified the carrier of the defective ice machine more than three months prior to filing claims, yet the carrier elected not to remedy the situation.

Based upon a review of the entire record herein, it is found the

carrier did violate Article 28 and Section 1 of the agreement of August 23, 1984 and the claims are hereby sustained. Awards cited by the organization support the amount of damages claimed and that amount will be awarded herein. Other issues not specifically mentioned herein have been considered and found to be either immaterial, inapplicable or moot.

ORDER:

Claims sustained. The award shall be implemented by the carrier within sixty days from the date set forth below.



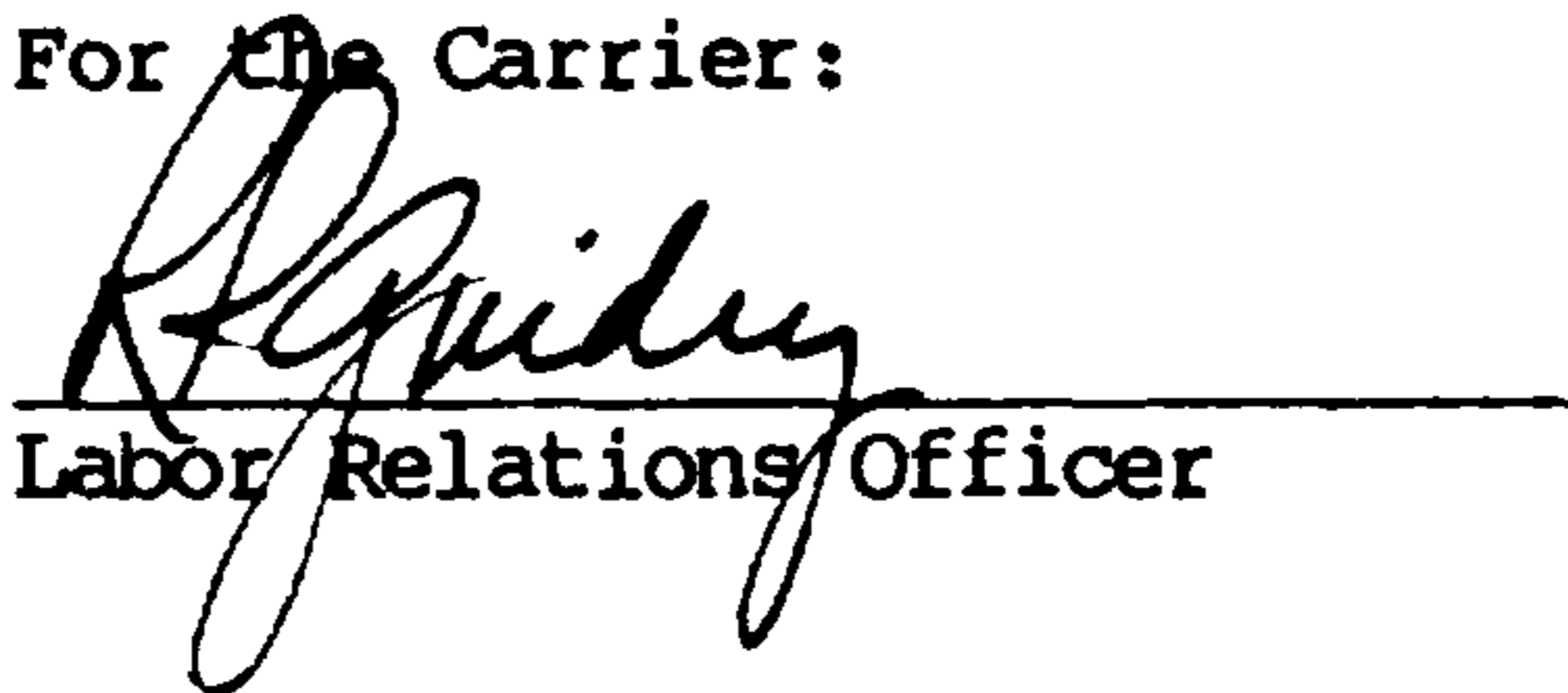
Raymond R. Hawkins
Chairman and Neutral Member

For the UTU(E)



C. S. Little
International Vice President

For the Carrier:



R. Quiddy
Labor Relations Officer

March 11, 1987