

PUBLIC LAW BOARD NO. 2946

Award No. 17

Case No. 17

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

Statement

of Claim: Claim of UTU and Conductor G. B. Ward, Brakemen K.R . Ventrica and M. L. Adams, Ennis - Hearne District, for payment of 100 miles account maintenance of way forces unloading slag at Richland Creek Bridge, December 12, 1978.

Findings: The Board, after hearing upon all the 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 December 12, 1978, Claimants were first-out, rested and available for service at Ennis, Texas, when at approximately 11:00 AM, Pile Driver Crane No. 4088 handled two cars of slag, SP461928 and SP461232 at Richland Creek Bridge between MP 198 and MP 200 for purposes of unloading of the contents thereof. Said cars were handled by the Pile Driver Crane with the assistance of M&W forces.

Organization rests the claim on an alleged violation of Article 18 - Self-propelled Machines (Brakemen's Agreement effective August 16, 1973) which, in pertinent part, reads:

"Sec. 1. The following shall govern the manning of self-propelled vehicles or machines by train service employees (conductors and brakemen) used in the maintenance, repair, construction or inspection work:

Road Service

(a) A conductor will be employed on on-rail self-propelled vehicles or machines when operating in main line territory, provided such machines are equipped with a drawbar and are operating under train orders.

NOTE 1: Self-propelled machines for the purpose of this article means such equipment operated on rails.

NOTE 2: Drawbar means a device capable of being used in moving standard freight cars.

NOTE 3: Main-line territory means main line and branch lines in road territory outside of switching limits but not spurs or the like.

NOTE 4: Train orders is used in the vernacular of trainmen as defined in the Operating Book of Rules.

The following Agreement of May 1, 1939 was in effect until altered as specifically stated therein by the above-quoted Article III of the National Agreement dated June 25, 1964, and interpretations thereof:

1. Self-propelled pile drivers and self-propelled ditchers will be manned by one conductor and two brakemen when used in road territory and in yards where yard service is not maintained,...

2. Self-propelled cranes and self-propelled burros that are required to handle standard car or cars will be manned by one conductor and two brakemen when used in road territory and in yards where yard service is not maintained.... When not required to handle standard car or cars, these machines will be manned by one conductor and one brakeman when used in road territory and in yards where yard service is not maintained...."

Organization avers that Pile Driver Crane No. 4088 did operate in main line territory on the Ennis-Hearne District, between MP 198 and MP 200, that said crane was operated under Form "Y", Train Order No. 2642 on at least one of the claim dates, and on all the other dates as evidenced by statements made by the pile driver operator and the foreman in charge of the work.

It is averred that the M&W operator and foreman advised Conductor Poole that they had been carrying loaded slag hoppers from Richland Spur to Richland Creek overhead bridge area, unloading slag, then bringing empties back to Richland Spur, MP-198.10 and switching out empties at Richland Spur. Additionally, Organization relies upon SBA No. 41, resulting in Award 1037 (Begley), a sustaining Award between the BofRT and the Southern Pacific T&L Lines. Attached thereto is the interpretation of Award No. 1037 in SBA No. 41, which, in pertinent part, held:

"If it had been necessary for this roadway machine to switch out cars from cars in order to obtain the necessary cars for their work at the site, this would have constituted switching and two (2) brakemen would then have been required under Special Agreement No. 16..."

Carrier denies the claim on the strength that there was no rule violation, no proof of supporting documents had been offered, and that there was no rule supporting such claim and no Award precedence on the property.

Carrier agrees that on December 12, 1978, Pile Driver Crane No. 4088, operating in the vicinity of Richland Creek Bridge was working between MP 198 and MP 200 unloaded two cars of slag within the "work limits of M&W and B&B forces engaged in making repairs to the bridge and approaches" and that these two cars were then placed back at the spur to be handled by train crews.

Carrier contends that there were two cars of slag material left by train crews at the spur in the vicinity of the Richland Creek Bridge.

Neither party has advanced an abundance of documentation or evidence, either in support of, or in support of a denial of, the claim.

Nevertheless, in considering the arguments made and the information provided by both parties the facts herein preponderate in favor of the claim. Some essential items are not in dispute; there is no question that the pile driver crane was operating in main line territory, there is no question that it had picked up the loaded slag cars at the spur track, moved same to its work location, unloaded same, and moved them back. Carrier relies upon SBA No. 41 resulting in Award No. 2452 (Moore), which was an interpretation of prior Awards as applied on this property.

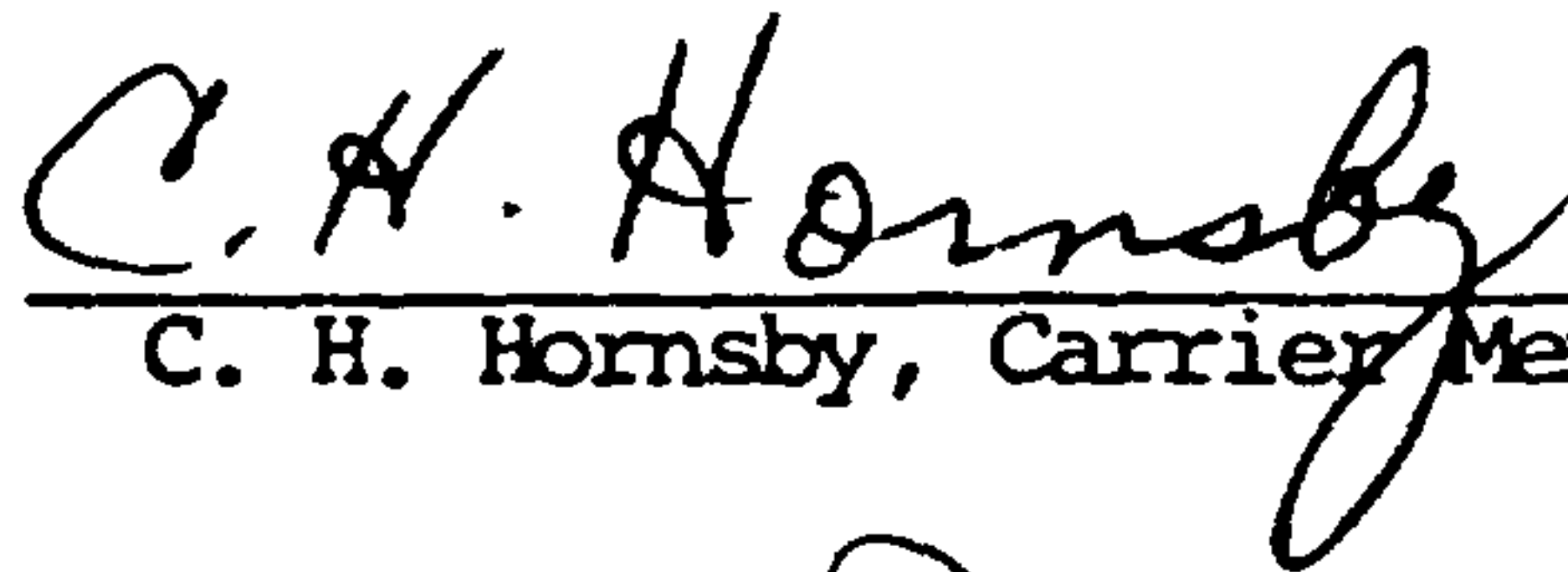
We find that the record reflects that Organization asserts written proof on 12-12-78 of the existence of a Y Order No. 2642 and 12-21-78 Y Order No. 2678. The conditions of the above cited Award have been fairly met in this case as reflected on those dates. As to the other dates involved we merely have the assertion of the conductor that he had a conversation with the M&W people confirming certain information; we find such proof to be too unreliable to support the claim in these circumstances. Something more than hearsay would be required on those other dates involved. Therefore, those claims of 12-21-78 and 12-21-78 will be allowed and the additional dates will be disallowed for lack of sufficient proof.

AWARD: Claim disposed of as per findings.

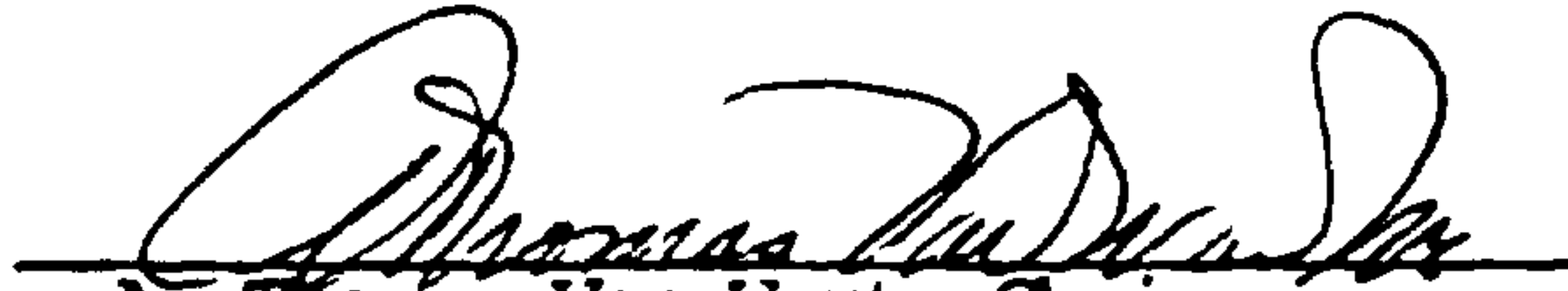
ORDER: Carrier is directed to make this Award effective within thirty (30) days of date of issuance shown below.



G. T. DuBose, Employee Member



C. H. Hornsby, Carrier Member



A. Thomas Van Wart, Chairman
and Neutral Member

Issued at Salem, New Jersey, December 23, 1982.