



Award No. 17169

Docket No. TE-16462

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(SUPPLEMENTAL)

Murray M. Rohman, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

**SOUTHERN PACIFIC COMPANY
TEXAS AND LOUISIANA LINES**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Southern Pacific Company (Texas and Louisiana Lines), that:

1. Carrier violated the Agreement between the parties when it permitted or required an employee not covered by the Agreement to perform agency work at Wharton, Texas, on the dates of January 25, 26, 27, 28, 29, 1965; February 1, 2, 3, 4, 5, 8, 9, 11, 12, 15, 16, 17, 18, 19, 22, 23, 24, 25, 26, 1965; March 1, 2, 3, 4, 8, 9, 10, 11, 12, 15, 16, and 17, 1965.

2. For each of the above dates, Carrier shall be required to compensate C. W. Harvey, agent-telegrapher, Wharton, Texas, a two hour call at the time and one-half rate.

EMPLOYES' STATEMENT OF FACTS: Copy of the Agreement between the parties effective December 1, 1946, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

Claimant was the owner and occupant of position of agent-telegrapher at Wharton, Texas, the only position under the Agreement at that station. His assigned hours of duty were 7:30 A.M. until 4:30 P.M., with one hour off for lunch, daily except Saturdays and Sundays.

Each of the claim dates was an assigned work day for the claimant. On each date the work in dispute was performed by the conductor of Train No. 382 when claimant was off duty.

Claim was initially filed on March 27, 1965, denied on May 19, 1965, and subsequently handled on appeal in the usual manner. It was discussed in conference with the highest carrier officer designated to handle disputes of this nature on October 18, 1965.

Other facts may be noted in the correspondence exchanged by the parties during the handling of this dispute on the property. Copies of that correspondence are appended hereto as TCU Exhibit 1. (Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: Wharton, Texas, is the point from which a branch line springs from the main line between Brownsville and Houston and extends to Palacios, a gulf port town. The branch line is served by a turn-around local freight run which originates and terminates at Wharton. The loads and empties originating at various locations on the branch line are brought to Wharton in this local train and are left in convenient tracks at Wharton and subsequently moved to Houston; or in the opposite direction, by through trains. As is required of all conductors who pick up cars, this local train conductor has prepared at all times form S-1310, Switch List, on which he lists the cars he handles into Wharton. After he has arrived at Wharton, he inserts on this switch list the track designation on which the cars are left. Two copies of the list are prepared and the conductor of the train which moves the cars from Wharton uses one copy as information as to the cars he is to move.

District Chairman, TCEU, presented claim on behalf of the Agent-telegrapher employed at Wharton for certain dates in January, February, and March, 1965, alleging that the insertion on the switch list by the local conductor on arrival at Wharton the designation of the track on which the cars were left was "equivalent" to checking the yard and making a switch list for which service the agent-telegrapher should have been called. Claim being without merit was declined. **CARRIER'S EXHIBIT NO. 1** reproduces the correspondence concerning the handling on the property. **CARRIER'S EXHIBIT NO. 2** reproduces the forms S-1310, switch lists filed by the conductor of the local freight train on these dates. (Exhibits nor reproduced.)

OPINION OF BOARD: The facts as alleged by the Organization's claim, indicate that the conductor on train No. 382, was instructed:

" . . . to make switch lists showing location of cars he sets out in Wharton Yard and destination of such cars. These lists are then left for another train to use in picking up and moving the cars to or toward their destination.

Such a practice is equivalent to checking the yard at Wharton and making switch lists to be used in moving cars from that place."

The Carrier, in declining the Claim, responded as follows:

"Conductors are required to make switch lists of cars they set out and add to their switch lists cars that they pick up. This has been a requirement of conductors for many years. The fact that the conductor of the local train indicates on his switch list on what track the cars he handled were set out does not constitute station work. The work of checking the yard tracks at Wharton after the local train set out at that point was not required of the Agent-Telegrapher. It was not a part of his duties and he is deprived of no work because one conductor is making use of the lists prepared by another conductor. I think you understand the conductor of Train 382 does not make a check of any track at Wharton but lists only the information as to where he is leaving the cars he is handling."

What complicates the situation indicated herein, is the fact that Wharton is a one-man station and, therefore, the Organization contends that "the work then became exclusive to the agent-telegrapher. This contention is unequivocally supported by Award 6975"

At the outset, in order to place in proper focus the instant dispute, we would state a basic principle—one conceded by the Organization. A conductor can properly make a list of cars moved in his own train from locations outside, to Wharton, and indicate on which track he set them out.

The gravamen of the Organization's complaint, however, is based on the use made of that list. Is such a list equivalent to making a yard check, as argued by the Organization? We find no basis for such conclusion. A yard check generally involves a physical check of the tracks. Here, the conductor on Train 382 inserted on his list the track on which the cars were placed. Hence, it is our conclusion that the claim should be denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee 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 the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of May 1969.