

PUBLIC LAW BOARD NO. 2444

Award No. 64

Case No. 78

Docket No. MW-81-135

Parties Brotherhood of Maintenance of Way Employees
to and

Dispute Southern Pacific Transportation Company
(Texas and Louisiana Lines)

Statement

of Claim: Claim of BMWE and Track Foreman D. J. Himel, Laborer/
Driver August Paul, Sr. and Track Laborer Norris Hester,
Evan Lewis, N. Young and R. L. Charles of extra gang
118 for an arbitrary and penalty payment of 40 hours
each at their respective pro rata rates of pay,
alleging contract to perform MofW work:

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 July 19, 1979, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

The Employees, among other things, asserted that:


"Commencing 7:00 AM, May 4, 1981 contractors from Track Work Construction Company, out of Schriever, Louisiana, placed switch ties, replace switch point and did other general work on the Val Lite switch at M.P. 13.5 at Lock Port, Louisiana, working 8 hours each day Monday, May 4, 1981 through and including Friday, May 8, 1981.


It is our position that it has been customarily and historically in accordance with the controlling agreement, that track work performed on switches coming off Southern Pacific Transportation Company property and leading into private industries, including switch points and going back a distance of 135 feet from point of switch will be done by Southern Pacific Transportation Company Maintenance of Way Employees coming under the..."


Carrier asserted that contractor Track Works, Inc., was not working past it but rather was performing work for Valentine Paper Company on May 4, 1981 which involved making repairs to the industry's portion of trackage. Carrier avers that it had not authorized any work if performed and that it was not aware of the conduct of the third party until after being advised May 20th.

The Board will not delve into the contentions of the parties inasmuch as there is a dispute in the facts necessary to a resolution. The case will be dismissed without prejudice to the positions of the parties.

Award: Claim dismissed as per findings.


M. A. Christie, Employee Member


C. B. Goyne, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued May 11, 1983.