

**ORIGINAL**

Decision No. 61141

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation )  
on the Commission's own motion )  
into the alleged violation by the )  
SOUTHERN PACIFIC COMPANY of )  
Section 6901(e) of the Labor Code. )

Case No. 6542

W. A. Gregory and William R. Denton, for the  
Southern Pacific Company, respondent.  
Leonard M. Wickliffe and O. K. Prentiss, for  
California State Legislative Committee,  
Order of Railway Conductors and Brakemen;  
William V. Ellis, for Railroad Brotherhood's  
California Legislative Board; and George W.  
Ballard, for Brotherhood of Railroad Train-  
men A.F.L. - C.I.O., interested parties.  
Cyril M. Saroyan, for the Commission staff.

O P I N I O N

On June 20, 1960, the Commission on its own motion instituted an investigation to determine whether Southern Pacific Company is violating Section 6901(e) of the Labor Code by not employing baggagemen on its Daylight and Lark trains or on any other passenger train, to determine whether the Southern Pacific Company should be ordered to employ said baggagemen, and to issue any order that may be appropriate.

Public hearing was held in this matter before Examiner Wilson E. Cline at San Francisco, on August 11, 1960. At the conclusion of the presentation of evidence the Southern Pacific Company made a motion to dismiss the proceeding. The matter was taken under submission on September 20, 1960, upon the filing by Southern Pacific Company of a letter of reply to the Memorandum of Points and Authorities filed by the Order of Railway Conductors and Brakemen, which letter is hereby made a part of the formal file in this proceeding.

Provisions of the Labor Code

Section 6900 of the Labor Code, added in 1959, provides that the Public Utilities Commission shall enforce the provisions contained in Sections 6901 through 6910 of the Labor Code.

Section 6901 of the Labor Code, in part, reads as follows:

"No common carrier operating more than four trains each way per day of 24 hours on any main track or branch line of railroad within this State, or on any part of such main track or branch line, shall run or permit to be run, on any part of such main track or branch line, any passenger, mail or express train on which there is not employed at least one conductor, one brakeman, and the following:"

\* \* \*

\*(e) One baggageman, except on a train upon which baggage is not hauled, and on gasoline motor cars."

Evidence Regarding Passenger Trains on which Baggage is Hauled

The results of the investigation by the Commission staff are incorporated in Exhibit No. 1 entitled "Report on the Employment of Baggage-men in Passenger Train Service on Southern Pacific Company." This exhibit shows that Southern Pacific Company is hauling baggage in sealed baggage cars over entire routes or portions of routes in the State of California where more than four trains are operated each way per day of 24 hours without employing the services of baggage-men. The checked baggage is neither unloaded from nor loaded into the sealed baggage cars at intermediate stations. Checked baggage to the intermediate points must be sent by another train and in order to arrive by the time the passenger disembarks from the train it must be left at the station in time to catch the earlier train. Otherwise, the passenger must return to the station to pick up the checked baggage at the time of its later arrival.

The passengers on such trains, of course, also have the election of carrying their baggage themselves into the passenger

compartment or of having a Red Cap handle their baggage for them. The Red Cap turns the baggage over to the car porter. The larger bags may be stored in racks or elevator type storage compartments at one end of the passenger car. The smaller pieces may be placed in the overhead racks above the seats.

The following is a tabulation prepared from Exhibit No. 1 of the Southern Pacific Company passenger trains on which checked baggage is hauled in locked baggage cars over all or a portion of the route without the employment of a baggageman:

<u>Train No.</u>	<u>Name</u>	<u>Route</u>
76	Lark	San Francisco to Los Angeles Coast Route
75	Lark	Los Angeles to San Francisco Coast Route
98	Coast Daylight	San Francisco to Los Angeles Coast Route
99	Coast Daylight	Los Angeles to San Francisco Coast Route
118	Commute	San Francisco to San Jose Coast Route
153	Commute	San Jose to San Francisco Coast Route
28	S.F.Overland	Oakland to Reno, Nevada Overland Route
27	S.F.Overland	Reno, Nevada to Oakland Overland Route
22	Mail	Oakland to Reno, Nevada Overland Route
21	Mail	Reno, Nevada to Oakland Overland Route
10	Shasta Daylight	Oakland to Klamath Falls, Oregon Shasta Route
9	Shasta Daylight	Klamath Falls, Oregon to Oakland Shasta Route
12	Cascade	Oakland to Klamath Falls, Oregon Shasta Route
11	Cascade	Klamath Falls, Oregon to Oakland Shasta Route

The witness for the Commission staff reaffirmed the following statement made in a letter set forth on page 6 of Exhibit No. 1:

"The staff has made an investigation into this matter and has found that the carrier operates several passenger trains with baggage cars sealed and consequently it is not assigning baggagemen to these trains as there is no baggage for them to handle. The staff could not find any safety factor involved in this practice."

Position Taken by the  
Southern Pacific Company

The respondent Southern Pacific Company points out that baggage is transported on the sealed baggage cars, but it is not handled or worked on the train. There are no duties for a baggageman to perform on such cars. A baggageman on such a train would either be locked in or out of the baggage car. The respondent contends that the employment of the baggagemen on such trains would accomplish no safety purpose and for Section 6901(e) to be interpreted to require a baggageman as a part of the crew when no baggage was handled would be arbitrary and unreasonable and contrary to law. It asserts that a full crew law may not be lawfully applied to require the presence of a man where there are no duties for him to perform. Respondent further contends that under a construction of the statute which would include as baggage the personal luggage carried in the passenger cars, every porter who handles this luggage as a part of his duties on the passenger cars may be considered a baggageman and the requirements of the statute are met in this manner.

Position taken by the Order of  
Railway Conductors and Brakemen

The representative for the Order of Railway Conductors points out in his memorandum that the record clearly shows that baggage is hauled on the trains in question, not only in the baggage cars but in the individual passenger coaches and Pullman cars as well.

He states that since no baggageman is furnished, obviously there is no one to handle the baggage on the baggage cars, but if a baggage man were supplied in accordance with the law, the traveling public would have the opportunity to have their baggage handled by the baggagemen on the baggage cars. He contends, therefore, that the Southern Pacific Company is clearly in violation of law in its operation of the passenger trains in question without the employment of baggagemen to handle the baggage.

The representative of the union further points out in his memorandum that the police power of the State extends not only to the preservation of the public health, safety and morals, but also to the preservation and promotion of the public convenience and welfare.

Interpretation and Application of  
Section 6901 of the Labor Code

Section 6901 of the Labor Code must be interpreted in the light of the fact that it is a section in Division 5 entitled Safety in Employment, Part 2 entitled Safeguards on Railroads, Chapter 2 entitled Operation Personnel, and that prior to the enactment of Section 6900 of the Labor Code it was enforced by the Division of Industrial Safety. Section 6800 in Chapter 1 of the same Part 2 provides that the Division of Industrial Safety has jurisdiction over the safety of employees in certain specifically named employments and over the safety of employees of all other public utilities as defined in the Public Utilities Act.

We conclude that Section 6901 is a code section pertaining to safety in employment rather than to the convenience of the members of the public who ride on the trains as passengers. Provisions in the Public Utilities Code authorize this Commission to regulate, for the public convenience, the services furnished by the railroads to their passengers.

We construe the term baggageman to mean an employee who handles checked baggage in a baggage car. A baggageman has no function to perform over the portion of the route where the passenger train is operated with its baggage car sealed, and the failure of Southern Pacific Company to employ baggagemen in such instances does not affect the safety of the operation of its passenger trains. Hence, it would be unreasonable to construe Section 6901 as requiring the employment of baggagemen when the baggage cars are sealed. When the reason for a rule ceases so should the rule.

After careful consideration of the record in this case, we find and conclude that Southern Pacific Company is not violating Section 6901(e) of the Labor Code by not employing baggagemen on its passenger trains while its passenger trains are operated with the baggage car or cars sealed.

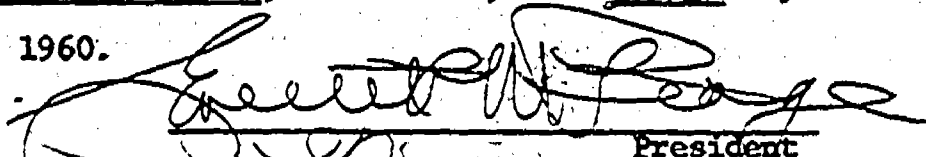
This investigation will be discontinued.

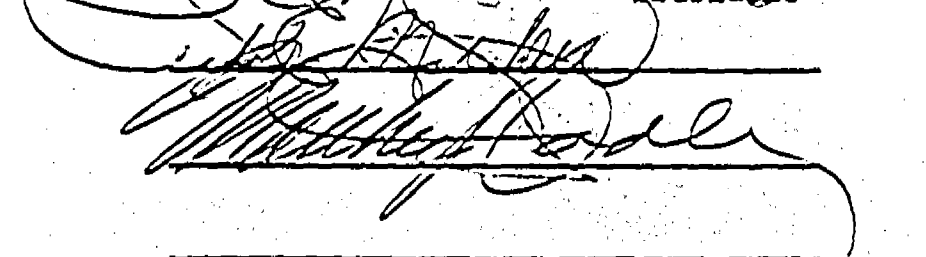
### O R D E R

A public hearing having been held in the above-entitled case and the matter now being ready for decision,

IT IS HEREBY ORDERED that the investigation herein is discontinued.

Dated at San Francisco, California, this 23rd day of November, 1960.

  
President



C. Lyn Fox

Commissioner. Theodore E. Jenner, being necessarily absent, did not participate in the disposition of this proceeding.