

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Consolidated Rail Corporation)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier failed and refused to compensate Patrol Foreman R. S. Madden for standby service rendered by him on May 25, 26, 27, 28, 29, June 2, 3, 9, 10, August 4, 5, 11, 12, 18, 19 and September 1 and 2, 1984 (System Dockets CR-1096 and CR-1265).

(2) Patrol Foreman R. S. Madden shall be allowed four hundred thirty-seven and seven tenth's (437.7) hours of pay at his applicable rate."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

In the two claims combined for review here, the Claimant asserts that he was required to patrol his territory to inspect track for "sun kinks" whenever the temperature was 80 degrees or higher and that he was "required to remain at home during all hours outside of his regular assignment to monitor the temperature and remain available for track patrol." In support of pay for remaining available for such duty, the claims on the property relied on Rule 23, which reads in part as follows:

"RULE 23 - WAITING OR TRAVELING BY DIRECTION
OF COMPANY

An employee waiting or traveling by direction of the Company by passenger train, motor car, or any other method of transportation will be allowed straight time for actual time waiting and/or traveling during or outside of the regularly assigned hours, except"

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The Board finds, as contended by the Carrier, that Rule 23 simply has no application here, even if the contention of the Claimant is fully accepted. Rule 23 must be read as a whole. It is entitled, "Waiting or Traveling by Direction of Company," and the Rule covers in extensive detail compensation related to travel as directed by the Carrier. The Organization would take the word "waiting" out of context and apply it to a situation such as described by the Claimant. A reasonable reading of the Rule, however, must lead to the conclusion that it is concerned exclusively with travel and/or the waiting in connection therewith. Rule 23 is not a "stand by" rule in reference to being available for duty where no travel is involved.

In its Submission, the Organization makes reference to Rules 11, 13 and 16. Since these were not alluded to in the handling on the property, reference to them thereafter may not be considered by the Board.

The record also shows crucial disparity between the Claimant's alleged understanding of instructions and the Carrier's contention that the instructions concerning inspection of "sun kinks" was of a substantially different nature.

The claims fail to establish with certainty that the Claimant was directed to "stand by" and fail to demonstrate the applicability of Rule 23.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Beyer - Executive Secretary

Dated at Chicago, Illinois, this 22nd day of September 1988.