

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 36830
Docket No. MW-35979
04-3-00-3-72

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(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 properly compensate Machine Operator J. P. Tripi, Jr. for work performed (handling and carrying tools) prior to and after his regularly assigned work period on May 11, 12, 13, 14, 18, 19, 20, 21, 26, 27 and 28, 1998 (System Docket MW-5343).
- (2) The Agreement was violated when the Carrier failed and refused to properly compensate Machine Operator E. G. Swain for work performed (handling and carrying tools) prior to and after his regularly assigned work period on May 11, 12, 13, 14, 18, 19, 20, 21, 26, 27 and 28, 1998 (System Docket MW-5345).
- (3) The Agreement was violated when the Carrier failed and refused to properly compensate Machine Operator J. P. Tripi, Jr. for work performed (handling and carrying tools) prior to and after his regularly assigned work period on June 1, 10, 11, 15, 16, 17, 18, 22, 23, 24, 25 and 29, 1998 (System Docket MW-5344).
- (4) The Agreement was violated when the Carrier failed and refused to properly compensate Machine Operator E. G. Swain

for work performed (handling and carrying tools) prior to and after his regularly assigned work period on June 1, 10, 11, 15, 16, 17, 18, 22, 23, 24, 25 and 29, 1998 (System Docket MW-5346).

- (5) As a consequence of the violation referred to in Part (1) above, J. P. Tripi, Jr. shall be allowed six (6) hours pay at the applicable MOCL1's time and one-half rate.
- (6) As a consequence of the violation referred to in Part (2) above, E. G. Swain shall be allowed six (6) hours pay at the applicable MOCL1's time and one-half rate.
- (7) As a consequence of the violation referred to in Part (3) above, J. P. Tripi, Jr. shall be allowed nine and one-half (9.5) hours pay at the applicable MOCL1's time and one-half rate.
- (8) As a consequence of the violation referred to in Part (4) above, E. G. Swain shall be allowed nine and one-half (9.5) hours pay at the applicable MOCL1's time and one-half 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 employee 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 were given due notice of hearing thereon.

This is not a case of first impression. See Third Division Award 35633 between the parties:

"Each . . . [claim] seeks compensation under Rule 23(c) for time spent carrying small tools while traveling between the daily headquarters and the work site before and after regularly assigned hours each day. . . .

The applicable Rule provides as follows:

'Rule 23 - WAITING OR TRAVELING BY DIRECTION OF COMPANY

c) Employees traveling on a motor car, trailer or highway vehicle, who are required to operate, supervise (Foreman), flag or move the car or trailer to or from the track, or handle tools to and from such vehicles, shall be paid for time riding as time worked.'

* * *

The Organization rejects the contention of the Carrier that secure storage is available for the employees' tools, thereby obviating the need to carry the tools back and forth to the work site

* * *

. . . [S]ince July 1995 the Carrier has denied claims on the basis that it [sic] has provided secure storage at the worksite and, since that time, no employee has been required to carry tools. That position has been upheld in Third Division Award 32615 and Special Board of Adjustment No. 1016, Award 106. Most directly on point are the claims resolved on this property in Special Board of Adjustment No. 1016, Awards 107, 109, 110, 112, 126, 128, and 129 all of which were consolidated into a single Board ruling. In those cases, the Board addressed the same issues that are presented for determination here.

With regard to the merits of the dispute, the Board found that no affirmative evidence had been presented by the Organization to counter the Carrier's position that secure storage had been provided. Special Board of Adjustment No. 1016, Award 107 stated, 'While the Organization takes exception to whether the provided storage is truly 'secure,' no proof of theft, damage or other loss has been established by evidence in the record.'

Special Board of Adjustment No. 1016, Award 107 also determined that the Organization's remaining argument was unconvincing:

' . . . By providing secure storage for tools at the worksite, the Carrier is not dictating where the employees store their tools. It merely provides each employee an option. Each employee is completely free to store his tools at the worksite or carry them back and forth each day. By having the option, however, the employee is not required to transport them each day. Accordingly, pay under Rule 23(c) is not required'

This case requires following the above line of reasoning. There is insufficient evidence in this record to show that the storage provided by the Carrier is not secure. Compare Special Board of Adjustment No. 1016, Awards 183, 186 and 187 cited by the Organization where the facts in those cases "differ" from the above discussed Awards in that showings were made that secure storage was not present. That is not the case in this matter.

The claim will therefore be denied.

AWARD

Claim denied.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 28th day of January 2004.