

PUBLIC LAW BOARD NO. 1844

AWARD NO. 40

CASE NO. 28

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

"(1) The Carrier violated the Agreement when it failed and refused to compensate the employees assigned to the track gang headquartered at DeKalb, Illinois for work performed in going to and from their work location and assembling point prior to and continuous with their regular assigned work period (Carrier's File 81-1-245).

"(2) Foreman W. L. Krause and gang members J. Saenz, F. Carreno and I. Perez each be allowed fourteen and one-half (14 1/2) hours' pay at their respective time and one-half rate because of the violation referred to within Part (1) of this claim."

OPINION OF BOARD:

But for the identity of the Claimants, and different locations and dates, the same question of contract interpretation and application is presented in the instant case as in Award No. 18 (Case No. 10). In both cases we are called upon to reconcile an apparent conflict between Rules 25, 30 and 34 on the one hand and Rule 43 on the other.

For reasons developed fully in Award No. 18 we are persuaded that the resolution of these conflicting rules requires evidence of the past practice between the parties. See also Third Division Awards 4581, 6668, 8825, 9263, 9983 and 13359. Unfortunately, however, the record contains only belated, bare and contradictory assertions by the parties regarding practice. This is insufficient to permit us to make an informed

finding on that point. In the circumstances we have no alternative but to dismiss the claim for lack of evidence.

FINDINGS:

Public Law Board No. 1844, upon the whole record and all of the evidence, finds and holds as follows:

1. That the Carrier and Employee involved in this dispute are, respectively, Carrier and Employee within the meaning of the Railway Labor Act;
2. that the Board has jurisdiction over the dispute involved herein; and
3. that the Claim must be dismissed for lack of proof.

AWARD

Claim dismissed.

  
Dana E. Eischen, Chairman

  
H. G. Harper, Employee Member

  
R. W. Schmiede, Carrier Member

Date: 12/6/58