

SPECIAL BOARD OF ADJUSTMENT 1016

Award No. 183
Case No. 183

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees
and
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 the machine operators assigned to Gangs TO-502, SM-502, SI-506 and all division production gangs on the Dearborn Division for work performed (handling tools) while traveling to and from their assigned work sites beginning July 10, 1996 and continuing (System Docket MW-4669).
2. As a consequence of the violation referred to in Part (1) above, the Claimants shall each be allowed one (1) hour's pay at their respective time and one-half rates for each workday they were required to perform the work in question beginning July 10, 1996 and continuing until the violation ceases.

FINDINGS:

This Board, upon the whole record and all of the evidence, finds and holds as follows:

1. That the Carrier and the Employee involved in this dispute are, respectively, Carrier and Employee within the meaning of the Railway Labor Act, as amended,; and
2. That the Board has jurisdiction over this dispute.

OPINION OF THE BOARD:

Rule 23 (Waiting or Traveling by Direction of Company), provides, in pertinent part, that:

(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.

Significant precedent exists by prior members of Special Board of Adjustment No. 1016 on the present issue. The Board found, in relevant part, that:

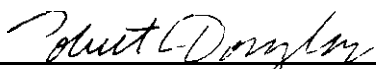
By providing secure storage for tools at the worksite, the Carrier is not dictating where the employees store their tools. It merely provides each employee an option. Each employee is completely free to store his tools at the **worksite** or carry them back and forth each day. By having the option, however,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

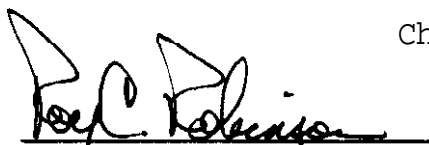
(Award Nos. 107, 109, 110, 112, 126, 128, and 129 at 6 (June 7, 2000) (**Wallin**, Chairman and Neutral Member).)

The record indicates that the facts in the present case differ from the facts before the earlier Special Board of Adjustment. In particular, the record reflects that the lock boxes on certain machines failed to function in an adequate manner. As a result, a viable option did not exist for the affected employees to leave their tools at the work site. Such employees, therefore, lacked any choice other than to handle their tools to and from their worksites. In fact, the record contains an unrefuted statement from the three employees (Randy W. Dunnagan, Willie F. Maddox, and Joe Wilson) that credibly described that break-ins had occurred and that tools had been stolen on September 12, September 13, and September 14, 1997. Based on this evidence, the Carrier shall compensate these three employees 32 hours' pay at their respective time and one-half rates.

AWARD:

The Claim is sustained in accordance with the Opinion of the Board. The Carrier shall make the Award effective on or before 30 days following the date of this Award.


Robert L. Douglas
Chairman and Neutral Member


R. D. Robinson
Employee Member


D. L. Kerby
Carrier Member

Dated: 9/6/01