

SPECIAL BOARD OF ADJUSTMENT 1016

Award No. 186
Case No. 186

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 Machine Operator D. L. Gunn for work performed (safety rule/job briefing and handling tools) on April 28, 29, 30, May 1 and 7, 1997 (System Docket MW-5064).
2. As a consequence of the violation referred to in Part (1) above, Claimant D. L. Gunn shall be paid forty-five (45) minutes' pay at the Class 1 Machine Operator's time and one-half rate for each day cited in Part (1) above.

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:

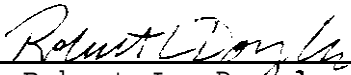
By providing secure storage for tools at the worksite, the Carrier is not dictating where the employees store their tools. It merely provides each employee an option. Each employee is completely free to store his tools at the **worksite** or carry them back and forth each day. By having the option, however, 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.

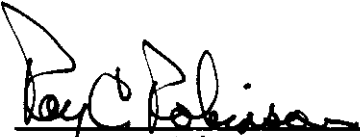
(Award Nos. 107, 109, 110, 112, 126, 128, and 129 at 6 (June 7, 2000) (**Wallin**, Chairman and Neutral Member).)

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 sufficient secure boxes were unavailable to function in an adequate manner. As a result, a viable option did not exist for the Claimant to leave his tools at the work site. The Claimant, therefore, lacked any choice other than to handle his tools to and from the worksite.

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