

SPECIAL BOARD OF ADJUSTMENT 1016

Award No. **188**
Case No. 188

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 affected machine operator employees assigned to Rail Gangs 230, 231 and 320 for work performed (handling and carrying tools) prior to and after their regularly assigned work period beginning June 24, 1996 and on a continuing daily basis thereafter (System Docket MW-5163).

2. As a consequence of the violation referred to in Part (1) above, the Carrier shall "... make a correction to its practices to allow for the above payments. Additionally, until such time violation is stopped, the Carrier must be responsible to make adjustments for each Claimant who has not been paid in accordance with the Agreement."

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.

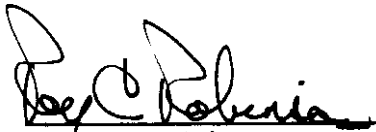
(Award Nos. 107, 109, 110, 112, 126, 128, and 129 at 6 (June 7, 2000) (Wallin, Chairman and Neutral Member).)

A careful review of the record in the present case indicates that the facts are materially identical in all relevant ways to the facts that the earlier Special Board of Adjustment had carefully considered. Under these circumstances no additional, different, or new information warrants disturbing the existing precedent.

AWARD:

The Claim is denied.


Robert L. Douglas
Chairman and Neutral Member


R. D. Robinson
Employee Member


D. L. Kerby
Carrier Member

Dated: 9/6/01