

PROCEEDINGS BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1016

AWARD NO. 37

Case No. 37

Referee Fred Blackwell

Carrier Member: J. H. Burton

Labor Member: S. V. Powers

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

vs.

CONSOLIDATED RAIL CORPORATION

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the foremen, machine operators and vehicle operators assigned to the Tie Gang and Raising Gang were compensated at the straight time rate instead of the time and one-half rate for time spent traveling from Huntington to Mifflin, Pennsylvania on October 14, 1986 (System Dockets CR-2884).

(2) As a consequence of the violation referred to in Part (1) above, each of the Claimants listed below shall be allowed three (3) hours of pay at their respective one-half time rates.

L. E. Wilson	A. T. Smith
G. R. Conrad	H. A. Brown
T. J. Lieb	R. M. Frew
C. D. Barner	W. V. Huling
P. C. Barroner	T. E. Savering
G. F. McGuire	G. L. Kurtz
J. M. McMahon	D. L. Metz
F. E. Nelson	S. E. Waite
G. J. Yartim	S. J. Vinglas
J. L. Beyer	F. L. Oaks
	S. E. Vinglas

FINDINGS:

Upon the whole record and all the evidence, and after hearing on August 17, 1989, in the Carrier's Office, Philadelphia, Pennsylvania, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as

FRED BLACKWELL
ATTORNEY AT LAW

19129 ROMAN WAY
GAITHERSBURG,
MARYLAND 20879
(301) 977-5000

amended, and that this Board is duly constituted by agreement and has jurisdiction of the parties and of the subject matter.

OPINION

The claim arises from claims filed by Foremen, Machine Operators and Vehicle Operators who allege that they are entitled to time and one-half pay under Rule 23 (c), instead of straight rate pay, for time spent traveling on the Carrier's crew bus on October 14, 1986.

On the claim date the Claimants' headquarters (camp cars) were moved from Huntington, Pennsylvania to Mifflin, Pennsylvania. The Claimants' tour of duty at the time was 7 A.M. to 3:30 P.M. At 7 P.M. on October 14, the Claimants arrived at Lewistown, Pennsylvania, where they tied up their machines and equipment. The Claimants were bused from Lewistown back to Huntington; from Huntington the Claimants travelled by bus or by their personal automobile to Mifflin, the new headquarters point.

Each member of the gang was paid three (3) hours straight time for travel time from Huntington to Mifflin. The Claimants contend that the three hours of travel time should be paid at the time and one-half rate because they were required to handle tools to and from the crew bus which brings their pay rate within the provisions of Rule 23 (c).

It is not disputed that the Machine Operator members of the gang transported their personal tools on the claim date, such as hammers, pliers, screw drivers, and wrenches, and that they

used such tools in the operation and maintenance of the machines and equipment which they operate at the various work sites.

Rule 23 (c) reads as follows:

"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."

* * * * *

After due study of the foregoing and of the record as a whole, including the arguments presented by the parties in support of their positions in the case, it is concluded that the facts of the case come within Rule 23 (c) and accordingly, the claim will be sustained as hereinafter provided.

Despite the Carrier's argument that the Claimants were not required to transport the tools in question, and that Rule 23 (c) should be construed as covering Company tools only, and not personal tools, an ordinary reading of the rule yields the construction that the fact that the tools are used to maintain Company equipment, which, in turn, carries out the work required by the Company's business purposes, is sufficient to bring the tools under the rule. The rule as written contains no qualifying language that would permit the term "tools" to be read as referring only to "Company tools"; and the fact that the tools are used to maintain Company equipment suffices to treat the Employees as being "required to handle...tools" within the meaning of the lang-

uage in Rule 23 (c).

As to remedy, the record makes no showing that the Foremen and Vehicle Operators among the herein Claimants handled tools during the travel situation of October 14, 1986 and consequently, the claims will be denied as to Foremen and Vehicle Operators.

In view of the foregoing, and based on the record as a whole, it is found that the Carrier violated Rule 23 (c); and that a sustaining Award for the Machine Operators is in order and that otherwise a denial Award is in order.

AWARD:

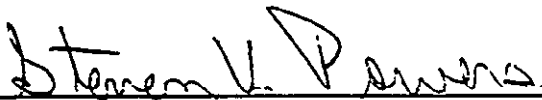
The claims of the Machine Operators under Rule 23 (c) are sustained, but all other claims are denied.

The Carrier shall comply with this Award within thirty (30) days from the date hereof.

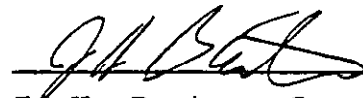
BY ORDER OF SPECIAL BOARD OF ADJUSTMENT NO. 1016



Fred Blackwell, Neutral Member



S. V. Powers, Labor Member



J. H. Burton, Carrier Member

Executed on December 27, 1990

I dissent inasmuch as the Board's interpretation of the rule is overly broad and ignores the intent and practice of the parties.

FRED BLACKWELL
ATTORNEY AT LAW

19129 ROMAN WAY
GAITHERSBURG,
MARYLAND 20879
(301) 977-5000

Conrail\1016\37-37.N09