NATIONAL MEDIATION BOARD
SPECIAL BOARD OF ADJUSTMENT NO. 1016
John C. Fletcher, Chairman & Neutral Member
Mark J. Schappaugh, Employee Member
Jeffrey H Burton, Carrier Member

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

CONSOLIDATED RAIL CORPORATION

Award No. 91
Award No. 98

The Organization filed one submission in both cases, noting that the issue in each was the same. The Carrier filed separate submissions, but considerably duplicative. The Board will consolidate the cases into one decision.

Date of Hearing - February 21,1995
Date of Award - June 30, 1995

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, repairmen and other affected employees of Patch Rail Laying Maintenance Gang No. RP 232 for work performed (handling and carrying tools) prior to and after their regular assigned work period beginning April 19, 1993 and continuing on a daily basis thereafter (System Docket MW-3104)

2. The Agreement was violated when the Carrier failed and refused to properly compensate the machine operators, repairmen and other affected employees of Gang No. SM 601/TO 601 for work performed (handling and carrying tools) prior to and after their regular assigned work period beginning March 15, 1993 and continuing on a daily basis thereafter (System Docket MW-3069)

3. As a consequence of the violation referred to in Part (1) above, the machine operators, repairmen and other affected members of Patch Rail Laying Maintenance Gang No. RP 232, shall each be allowed one (1) hour's pay at their respective time and one-half rates and the difference between the overtime rate and the straight time rate for time spent traveling in excess of thirty (30) minutes to and from the work site for each workday they were required to perform the work in question beginning on April 19, 1993 and continuing until the violation ceases.

4. As a consequence of the violation referred to in Part (2) above, the machine operators, repairmen and other affected

members of Gang No. SM 601/TO 601, shall each be allowed one (1) hour's pay at their respective time and one-half rates and the difference between the overtime rate and the straight time rate for time spent traveling in excess of thirty (30) minutes to and from the work site for each workday they were required to perform the work in question beginning on March 15, 1993 and continuing until the violation ceases.

FINDINGS:

Special Board of Adjustment No. 1016, upon the whole record and all of the evidence, finds and holds that the Employee(s) and the Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the disputes(s) herein; and, that the parties to the dispute(s) were given due notice of the hearing thereon and did participate therein.

Before turning to the merits of these cases it is necessary to dispose of two procedural arguments raised by Carrier. With respect to the Claims on behalf of Rail Gang 232 Carrier argued that it failed to identify the specific individuals involved. The Board does not find this argument persuasive. At the outset the Organization identified the involved claimants as the machine operators, repairmen and others required to handle tools to and from the headquarters point of the gang. This identification is sufficient to satisfy the requirements of Rule 26 of the parties Agreement, as it has long been held that specific claimants need not be identified by name, only that their identification be readily ascertainable.

Carrier's second procedural argument is that the claim on behalf of Rail Gang 232 was not timely presented in that it was not filed within sixty days of the date of occurrence. The Organization alleges that its claim is covered by paragraph (f) of Rule 26. With this the Board agrees. The alleged violation is a continuing one, and Rule 26 (f) is designed to cover this very situation.

With regard to the merits of the claims, the Organization contends that under Rule 23, employees traveling to and from the work site, that are required to handle tools (including personal tools), are to be paid for time riding as time worked. In these claims, the Organization states, machine operators, repairmen and others were required by their job bulletins to "be equipped with necessary hand tools, and make running repairs as necessary." And, inasmuch as Carrier does not provide secure storage areas at the work site the employees were required to tote their tools back and forth each day.

Carrier argues that Rule 23 does not cover personal tools, its intent being limited to Company owned tools. Next it notes that work-site reporting was altered by the July 28, 1992 Agreement. Previously employees working in production gangs were paid from the time of their reporting at their headquarters point to the time returning to the headquarters point, including travel time spent to and from the work site. Article VII of the July 28, 1992 Agreement altered this requirement with a provision that paid time did not start until after of thirty minutes of travel time. This thirty minutes of "free time" (Carrier's characterization) on each end of the trip was interpreted in

Letter of Understanding No. 13, dated July 28,1992, which noted that free travel time did not apply to the senior foreman of the gang and drivers transporting the crews to and from the work site. Employees who may be required to handle tools were not mentioned in Letter No. 13, thus, the parties did not exclude them from the "free time" exception created by Article VII, Carrier insists.

The issue of whether personal tools are included within Rule 23 has been decided by Award 37 of this Board on December 27, 1990. It that Award, which was dissented to by the Carrier Member, the Board majority noted:

> 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" with the meaning of the language in Rule 23 (c).

Carrier has not provided this Board with a sufficient basis to depart, in any fashion, from the previous holding of the majority, except to note that Award 37 was overly broad and ignored the intent and practice of the parties. Accordingly, not finding Award 37 in palpable error, under well established requirements of this industry that precedent setting awards be followed, the decision of Award No. 37 is reaffirmed.

Turning next to Carrier's arguments that Article VII and Side Letter 13 excuse it from payments that may be required under Rule 23 when employees are required to handle tools while traveling. The Board does not find these arguments persuasive. Article VII and Side Letter 13 deal with one type of situation, mainly providing certain relief in payment of travel to and from the headquarters point to the work site. It is a modification of starting time rules. Rule 23 deals with something different. It treats as "time worked" travel time when employees are required to perform some service at the same time they are traveling, i.e., "operate, supervise, flag, or move the car or trailer to or from the track, or to handle tools to and from such vehicles."

It is clear from the history of the development of Article VII that it was only intended to provide relief to Carrier (provide "free time" as they term it) when moving production gangs back and forth between the headquarters and the work site. Article VII specifically modified requirements of Rule 12 (a) that "time of the employees would begin and end at their headquarters point." There is no indication that Article VII was intended to alter other compensation rules, such as Rule 23, that requires that travel time be counted as work time when employees perform some service while traveling.

Moreover, if Article VII can be considered as modifying Rule 12(a), then Carrier could have employees traveling to and from the work site do all sorts of

work, like flag, move the car or trailer to or from the track, supervise, and handle tools (including heavy jacks, welders, etc.) without payment, if the activity occurred during the "free time" developed in Article VII. This would produce an absurd application, a result that needs to be avoided. In this record it is the conclusion of this Board that Article VII did not modify the requirements of Rule 23. Under that Rule travel time is to be counted as work time if any of the service listed in the Rule are completed.

Accordingly, the Board must conclude that the claims in these dockets have merit. They will be sustained.

A W A R D

Claims sustained.

O R D E R

Carrier is directed to comply with this award and make necessary payments within thirty days of the date indicated below.

John C. FLETCHER, Chairman & Neutral Member

Mark J. SCHAPPAUGH
Employee Member

Jeffrey H. BURTON
Carrier Member

I DISSENT.

Dated at Mount Prospect, Illinois, June 30, 1995