

SPECIAL BOARD OF ADJUSTMENT 1016

Award No. 182
Case No. 182

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 Class 2 and class 3 Machine Operators assigned to Gang TO-401 for work performed (handling and carrying tools) prior to and after their regularly assigned work period beginning April 15, 1996 and on a continuing daily basis thereafter (System Docket MW-4499).

2. The claim as appealed by General Chairman J. Dodd to Senior Director-Labor Relations J. H. Burton on January 15, 1997 shall be allowed as presented because the appeal was not disallowed by Senior Director-Labor Relations J. H. Burton in accordance with Rule 26(c).

3. As a consequence of the violation referred to in Part (1) and Part (2) above, the Class 2 and Class 3 Machine Operators assigned to Gang TO-401 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 on April 15, 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:

A careful review of the record indicates that Vice Chairman Nicholas R. Guarnieri mailed the initial claim in a letter dated June 12, 1996; that Division Engineer W. B. Kerchof denied the claim in a letter dated August 9, 1996; that the Vice Chairman filed an appeal in a letter dated August 29, 1996; that Manager of Labor Relations L. A. Ross denied the claim in a letter dated December 18, 1996; that General Chairman Jed Dodd appealed the claim to Senior Director-Labor Relations J. H. Burton in a letter dated January 15, 1997; that the parties conferenced the matter on March 5, 1997; that the Senior Director-Labor Relations denied the matter in a letter dated April 29, 1997; that the Carrier erred by misaddressing the envelope that contained the April 29, 1997 denial to the Organization; that the postal service returned the improperly addressed envelope to the Carrier on May 12, 1997; and that the Carrier re-mailed the April 29, 1997 denial to the Organization on May 12, 1997.

Rule 26 (Claims and Grievances) provides, in pertinent part, that:

(c) A claim or grievance denied in accordance with paragraph (b) shall be considered closed unless it is listed for discussion with the Senior Director-Labor Relations by the employee or his union representative within sixty (60) days after the date the claim or grievance was denied by the Manager-Labor Relations. All such cases listed ten (10) days prior to the date of a scheduled system meeting will be placed on the docket for discussion at such meeting. When a claim or grievance is not allowed, the Senior Director-Labor Relations will notify, in writing, the General Chairman (and the employee, if the employee listed the claim or grievance) within sixty (60) days after the case was discussed at a scheduled system meeting of the reason therefor. When not so notified, the claim will be allowed.

(d) A claim or grievance denied in accordance with paragraph (c) will be considered closed unless within nine (9) months from the date of the decision of the Senior Director-Labor Relations proceedings are instituted before the National Railroad Adjustment board of such other Board as may be legally substituted therefor under the Railway Labor Act.

(e) The time limits specified in paragraph (b), (c) or (d) may be extended by agreement in any particular case. When the U.S. Mail is used, the postmark will govern in determining compliance with the various time limits.

Rule 26(c) therefore provides that the Carrier had 60 days after the parties had discussed the dispute to notify the General Chairman about the reason for the denial of the claim. As the parties conferred on March 5, 1997, May 4, 1997 constituted the 60th day after the discussion about the dispute.

Rule 26(e) identifies the date of the postmark as the critical date for determining compliance with the requirement that such notification occur within sixty days. The un rebutted evidence establishes that an inadvertent error occurred in which the Carrier omitted the street name of the address on the envelope that contained the decision of the Senior Director-Labor Relations. Although a technical error occurred in the preparation of the envelope, the postmark on the envelope reflected a date within the period of 60 days required by Rule 26.

Under these highly unusual circumstances, the Carrier's action constituted, at minimum, substantial compliance with the requirements of Rule 26 which treats mailing as the key obligation rather than receipt of the document by the Organization. The Carrier therefore did not violate Rule 26 in connection with the processing of the dispute. This conclusion is consistent with a decision by the Third Division that involved the same parties and that recognized a "presumption of veracity" with respect to the mailing of documents. (Award No. 34997 at 3 (September 20, 2000) (Scheninman, Referee).)

With respect to the merits of the dispute, 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:

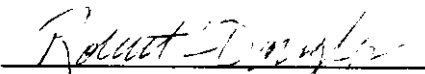
By providing secure storage for tools at the worksite, the Carrier is not dictating where the employees store their tools. It merely provides each employee an option. Each employee is completely free to store his tools at the worksite or carry them back and forth each day. By having the option, however,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

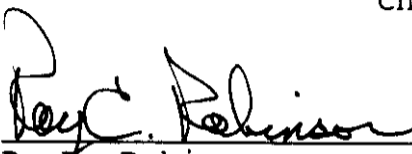
(Award Nos. 107, 109, 110, 112, 126, 128, and 129 at 6 (June 7, 2000) (Wallin, Chairman and Neutral Member).)

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. P. Robinson
Employee Member


D. L. Kerby
Carrier Member

Dated: 9/6/01