

SPECIAL BOARD OF ADJUSTMENT 1016

Award No. 185

Case No. 185

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 employees assigned to Patch Rail Laying Maintenance Gang 230 for work performed (handling and carrying tools) prior to and after their regularly assigned work period beginning April 14, 1997 and on a continuing daily basis thereafter (System Docket MW-4778).

2. As a consequence of the violation referred to in Part (1) above, the affected employees assigned to Gang 230 shall each be allowed "the difference in pay between what they are being paid and what the Organization states they are entitled to. This means that the 30 minutes to and from should be paid at time and one-half and the Carrier is paying nothing now. After the 30 minutes the Carrier is paying straight time but should also be paying overtime for this also."

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:

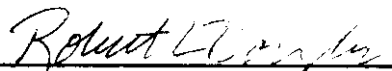
By providing secure storage for tools at the worksite, the Carrier is not dictating where the employees store their tools. It merely provides each employee an option. Each employee is completely free to store his tools at the worksite or carry them back and forth each day. By having the option, however,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

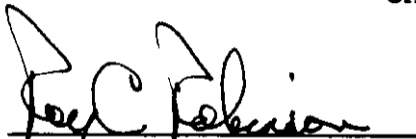
(Award Nos. 107, 109, 110, 112, 126, 128, and 129 at 6 (June 7, 2000) (Wallin, Chairman and Neutral Member).)

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