

SPECIAL BOARD OF ADJUSTMENT 1016

Award No. 187

Case No. 187

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 Class 2 and Class 3 Machine Operators assigned to Gangs SM-401 and TO-401 for work performed (handling and carrying tools) prior to and after their regularly assigned work period beginning August 4, 19976 and on a continuing daily basis thereafter(System Docket MW-5087).

2. As a consequence of the violation referred to in Part (1) above, the affected employees assigned to Gangs SM-401 and TO-401 shall each be compensated "\*\*\* their applicable machine operator rate for time and one-half for the free travel time imposed on each machine operator while handling their tools to and from the job site. This claim is continuing as per Rule 26(f) until the operators are properly compensated at the time and one half rate as stipulated in Rule 23(c)." (Underscoring in original).

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 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.

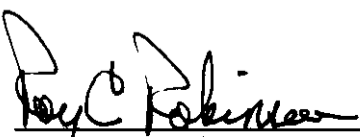
(Award Nos. 107, 109, 110, 112, 126, 128, and 129 at 6 (June 7, 2000) (Wallin, Chairman and Neutral Member).)

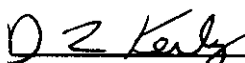
The record indicates that the facts in the present case differ from the facts before the earlier Special Board of Adjustment. The record reflects that certain machines were not equipped with boxes to lock the personal tools of the employees. As a result, a viable option did not exist for the employees to leave their tools at the work site. Such employees therefore lacked any choice other than to handle their tools to and from their worksites. The record also contains certain unrefuted statements from the employees that credibly described the specific circumstances that confronted the employees. Based on this evidence, the Carrier shall compensate the affected employees (a total of 27 employees) for 28 hours' pay at their respective time and one-half rates.

AWARD:

The Claim is sustained in accordance with the Opinion of the Board. The Carrier shall make the Award effective on or before 30 days following the date of this Award.

  
Robert L. Douglas  
Chairman and Neutral Member

  
R. D. Robinson  
Employee Member  
Dated: 9/6/01

  
D. L. Kerby  
Carrier Member