

SPECIAL BOARD OF ADJUSTMENT NO. 910

PARTIES:

United Transportation Union (T)
as the Representative of
J. Watto

Award No. 200

Case No. 200

vs.

Docket No. CR-T-
2056

Consolidated Rail Corporation

STATEMENT OF CLAIM:

Claims of extra yard trainmen J. Watto and S. Watto for one (1) day holiday pay for the New Year's Day Holiday on January 1, 1983. Rule 56(c) Note 2.

Upon the whole record and all the evidence, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act as amended; that this Board is duly constituted by agreement and has jurisdiction of the parties and of the subject matter; and that the parties were given due notice of this hearing.

FINDINGS

Claimants are brothers who were regularly assigned on yard jobs until they went on vacation. When they returned

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from vacation, they were displaced from their regular assignments and finally reverted to the extra list, marking up in sufficient time to work a tour of duty on January 2, 1983. Previously, they had no work since they returned from their vacation on December 27, 1982, although they had been available for work from December 27, 1982 until January 2, 1983.

The organization had initially filed time penalty claims for the January 1, 1983 holiday for each brother separately and then combined the claims into one. The organization also had, at first, claimed holiday pay under Rule 56(c) applying to regularly assigned trainmen. The organization then asserted the application of Rule 56(g).

The Carrier has raised a procedural objection on the ground that the claims have not been stated as required by Rule 91. The Carrier has further argued that the organization having made its contentions under rules applying both to regularly assigned trainmen and extra list yard trainmen, the procedural objection should be sustained.

Although the Carrier could make out a case for its procedural objection, the organization has argued that it was not raised on the property and, therefore, should not be considered. In the particular circumstances of this case, the Board will consider the merits without, however, intending to

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establish a precedent for accepting improperly stated claims or confusing contentions.

It is obvious that claimants do not qualify under Rule 56(g)(1) in that they did not perform yard service on the calendar days immediately preceding and immediately following the holiday nor do they qualify under Subdivision (2) by having performed yard service on the holiday. The Board does not agree with the organization's argument that compensation for yard service performed prior to the vacation period may be credited for 11 or more of the 30 calendar days immediately preceding the holiday and that no compensable service having been performed during the vacation period should not be permitted to defeat the claim. The Committee created by Article X of the April 5, 1957 Agreement to handle disputes under that agreement decided in a case where the organization made the same contention and argument that:

"But the rule in specific terms requires the crediting on 11 days of compensation 'for yard service'. We think that the plain and straightforward meaning of this phrase is that the compensation must be for yard service performed on 11 required days. Since no yard service at all was performed by claimants during their

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vacations, it would be a distortion of the language of the rule to find that the compensation they received on vacation was 'for yard service' within the intent and meaning of Section 3(b)(3).

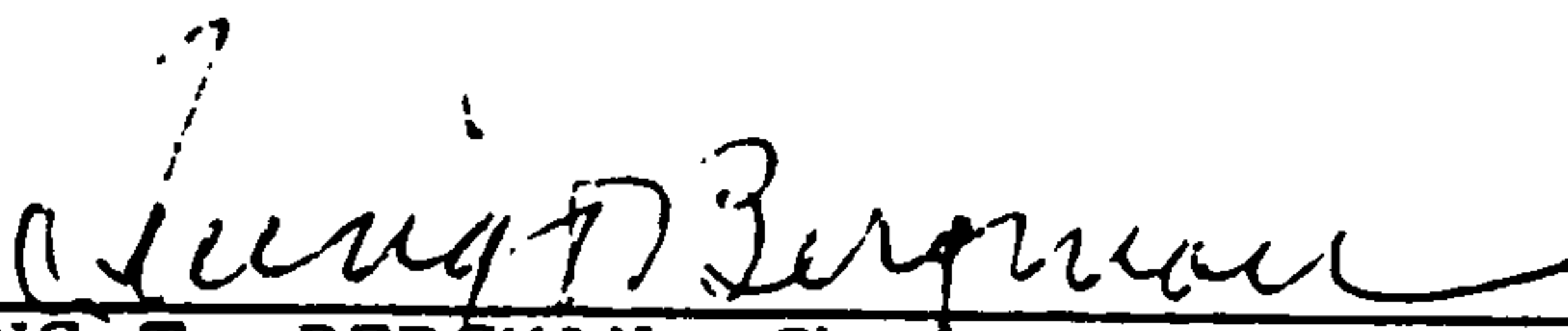
Vacations with pay are earned and predicated upon the services that are performed prior to the vacation period. There is no rule, agreement or evidence in the record that any part of the service performed prior to the beginning of the vacation is to be credited as performed during the vacation. In addition, claimants are compensated for the service they perform prior to the beginning of their vacation and none of that money is reserved to pay for their vacation time. Vacation pay is a separate and added benefit that is not compensation for services performed during the vacation.

AWARD

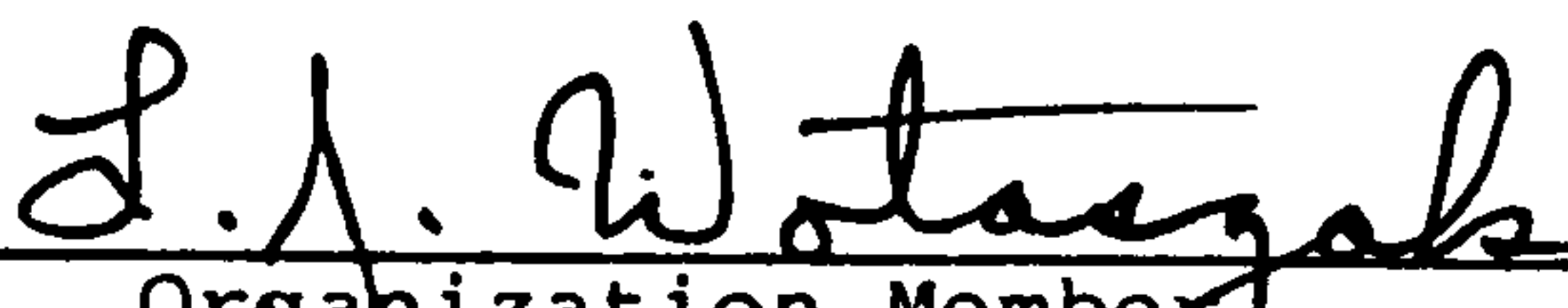
Claim Denied.

Dated: June 22 , 1987

Rockville Centre, New York



IRVING T. BERGMAN, Chairman and Neutral Member



Organization Member



Carrier Member