

The Third **Division** consisted of the regular members and in addition Referee Eckehard **Muessig** when award was rendered.

(Brotherhood of Maintenance of Way Employes
PARTIES TO DISPUTE: (
(**Delaware** and Hudson Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement when it assigned outside forces (**Sproul Construction** Company) to perform paving work at the Main Street **Crossing** in Moosic, Pennsylvania on August 12 and 15, 1983 (System File 8.84).

2. The Carrier also violated Article IV of the May 17, 1968 National Agreement when ii did **not** give the General Chairman advance written notice of its **intention** to contract said work.

3. **Trackmen** P. **McHale**, P. **Smith** and K. Doyle shall each be allowed six and one-half (6 1/2) hours of pay at the **trackman's** rate, System Equipment Operator A. Nepa shall be allowed six and one-half (6 1/2) hours of pay at the system equipment operator's rate and **J. Mesiti** shall be allowed two and **one-half** (2 1/2) hours of pay at the system equipment operator's rate."

FINDINGS:

The Third **Division** of the Adjustment Board upon the whole record and all the evidence, finds **that**:

The carrier or carriers and the **employe** or employees involved in this dispute are respectively carrier and **employees** within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The claim before the Board arose after the Carrier had contracted with an outside firm to pave one of its grade crossings at Moosic, Pennsylvania.

The Board has thoroughly reviewed the record developed on the property and concludes from this review that there has been a violation as claimed by the Organization. In reaching our finding, the Board notes that at no **time** during the handling of the case on the property did the Carrier come forth with substantive rebuttals to the allegations that:

The claimed work belonged to the Maintenance of Way
Craft

- or -

It did not notify the General Chairman of its
intent to contract **out** the work at issue, as
required by Article IV of the May 17, 1968 National
Agreement.

Accordingly, the only issue which remains before the Board is the
question of damages. This Division has mainly held that where Claimants are
fully employed and where no loss of earnings has been demonstrated, monetary
damages are not awarded. We do not deviate from that principle here. How-
ever, as found in Third Division Award 26174, we are not unmindful of the
Organization's argument "that flagrant and continued disregard of a Carrier's
responsibility to provide proper notification should **result** in the sustaining
of a monetary Claim." Like the Board in that case, we find that this is an
argument that warrants attention **and** we will continue to consider it in the
future.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest.


Nancy J. Lever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of January 1988.