

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

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way **Employees**
(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 (Donald **Millious Construction** Company) **to** completely refurbish road **crossings** at Albany, New York on July 18, 19, 20, 21, 22, 25, 26, 27 and 28, 1983 (System File 5.84).

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

3. Furloughed Equipment Operator **K. Wetsell** shall be allowed seven-teen (17) hours of pay at the 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 **employee** 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 **Organization** contends that the Carrier violated Article IV of the **May** 17, 1968 National Agreement when it failed to notify the General Chairman of its plans to contract out work to refurbish **certain** road crossings at Albany, New York.

We agree with the **Organization**. In this respect, we particularly give weight to the fact that at **no** time on the property did the Carrier come forth **with** a substantive rebuttal which addressed the essence of the **Organi-zation's** Claim. Accordingly, the key elements of the Claim **mainly** stand unchallenged and, therefore, are accepted as fact.

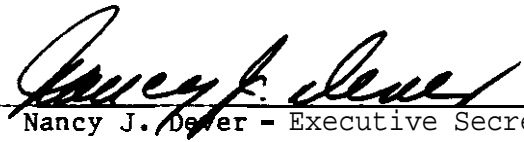
In recognition of the fact that that portion of its Claim covering the period of July 18 through July 26, 1983, inclusive was untimely, the Organization amended its Claim upon appeal to the Director-Labor Relations and Human Resources to request seventeen (17) hours of pay at the Equipment Operator's rate for July 27 end 28, 1983, on behalf of furloughed Equipment Operator K. **Wetsell**.

Given the state of the record as developed on the property, Claimant shall be allowed the remedy as requested in Item 3 of the Statement of Claim.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 

Nancy J. Dever - Executive Secretary

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