

The Third Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

(Brotherhood of Maintenance of Way Employees  
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 Mechanical Department forces instead of Maintenance of Way Department Work Equipment Repairmen to repair and maintain cranes, trucks, forklifts, etc. on the **Susquehanna**, Champlain, Saratoga and Pennsylvania Subdivisions on and subsequent to December 22, 1982 (System File 3-83).

(2) The Carrier violated the Agreement when it assigned Bridge and Building Department employees (one foreman and three mechanics) instead of work equipment repairmen to replace wheels on a motorized track car on December 28, 1982 (System File 4-83).

(3) Because of the aforesaid violations, furloughed Work Equipment Repairman R. B. Barton shall be allowed eight (8) hours of pay each day for December 22 and 23, 1982, sixteen (16) hours of holiday pay for December 24 and 27, 1982 (Christmas Eve and Christmas Day 1982) and eight (8) hours of pay for December 28, 1982 and for each day subsequent thereto on which Mechanical Department forces perform work as described in Part (1) hereof."

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.

As Third Party in interest, the International Brotherhood of Boiler-makers and Blacksmiths was advised of **the pendency** of this dispute, but chose not to file a Submission with the Division.

On December 22, 1982, and subsequent thereto, **Carrier** used a Mechanical Department Blacksmith to make repairs on Mechanical Department equipment such as cranes, trucks, forklifts and wheel cranes. On December 28, 1982, Carrier used Bridge and Building Department employees to replace wheels on a motorized track car. The Organization filed two separate claims on behalf of a furloughed Work Equipment Repairman contending that he should have been used to complete this work. The letter covering the December 22, 1982, Incident did not cite a single rule in support of the claim. The letter covering the December 28, 1982, incident cited Rule 40 as being violated. Letters of appeal did not specifically identify any rules of the Agreement as being involved. When the matter was being handled on the property, Carrier observed **that** the Organization had failed to cite a rule as being violated **in** the first claim and that it failed to establish any rule support for the alleged violations in both claims.

After carefully reviewing all of the material in this matter, we must conclude that, with the exception of a passing reference to Rule 40, the Organization, on the property, failed to cite any rules in support of its claim that work of the furloughed Work Equipment Repairman was improperly assigned. For the first time in its Submission before this Board, it relies on Rules 1, 3 and 36 as being involved. It does not mention Rule 40 anywhere in its Submission. We have often held that such defects preclude our consideration of the Organization's claim. In Third Division Award 20064, we stated:

"The employees have the responsibility and burden to cite the rules and agreement language relied upon during handling on the property. This, of course, is a fundamental due process right of the other party, and where the rules are not cited, discussed, or in some way stated on the property, the omitted rules cannot be supplied for the first time in the submission of claim to this Board."

we must, therefore, conclude that the claim is not properly before this Board. For similar rulings, see Third Division Awards 15835, 19857, 19858, 19902, and 19970.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest

  
Nancy J. Zaver - Executive Secretary

Dated at Chicago, Illinois, this 25th day of February 1988.