

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 38148
Docket No. MW-37472
07-3-02-3-562

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employes
(CP Rail System (former Delaware and Hudson
(Railway Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned outside forces to perform Maintenance of Way work (operate equipment for excavating and grading) in preparation of installing a running track at the Howard’s Siding Project in the vicinity of Mile Posts A 123 and A 124 on the Canadian Main Line beginning on May 11, 2001 and continuing, instead of assigning said work to system equipment operators (Carrier’s File 8-00200 DHR).
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with proper advance written notice of its intention to contract out the aforesaid work or make a good-faith effort to reduce the incidence of subcontracting and increase the use of its Maintenance of Way forces as required by Rule 1 and Appendix H.
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, the senior furloughed system equipment operators, equal to the number of contracted employes, shall be compensated at their respective rates of pay on an hour for hour basis for all time worked by the outside forces in the

performance of the aforesaid work beginning May 11, 2001 and continuing.”

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 employee 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 were given due notice of hearing thereon.

This case is essentially identical to the matters decided in Third Division Awards 38149 and 38151. For reasons set forth in detail in those Awards, the instant claim is denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 23rd day of April 2007.