

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26691
Docket Number MW-26347

Robert W. McAllister, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(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 to transport tools, material and equipment between Carbondale, Colonie, 'BL' Cabin and Nescopeck on September 13, 16 and 20 and October 13, 1983 (System File 13.84).

2. The Carrier also violated Article IV of the May 17, 1968 National Agreement (Rule 44) when it did not give the General Chairman advance written notice of its intention to contract such work.

3. As a consequence of the aforesaid violations, Equipment Operator S. Muztafago shall be allowed twenty-nine (29) hours of pay at his straight time rate and two (2) hours of pay at his time and one-half rate."

OPINION OF BOARD: On September 13, 16, 20, and October 13, 1983, the Carrier assigned an outside contractor to transport tools, equipment, and materials. The Claimant is an equipment operator whose regularly assigned truck was out of service at the time this dispute arose. In essence, the Organization argues the Carrier violated the fifteen day notice provision of Rule 44 when it failed to notify the General Chairman of its intention to contract for the truck and driver on the dates in question. The Carrier acknowledges Truck #20 was out of service and asserts it never intended to contract for the services of a truck and driver. Whether or not, under the particular circumstances the Carrier claimed existed, a fifteen day notice was practical, the fact is the Carrier never attempted to explain those circumstances to the General Chairman, not even in a telephone call.

We note that, in correspondence with the Carrier, the Organization disputed the Carrier's contention it could not obtain a vehicle without hiring its driver. The Organization asserted the Carrier had, in the past, leased such equipment without having to hire a contractor's operator. This was never rebutted by the Carrier.

Accordingly, this Board will sustain the Claim for thirty-one (31) hours at the pro rata rate.

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

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

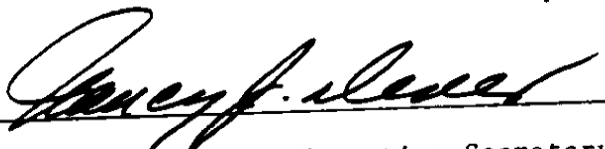
That the Agreement was violated.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: _____


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of November 1987.