

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 seventeen (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 employe or employees involved in this dispute are respectively carrier and employes 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 Organization'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 and 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.