Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 27215
THIRD DIVISION Docket No. MW-26553
88-3-85-3-358

The Third Division consisted of the regular members and in addition Referee Gil Vernon when award was rendered.

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 repair Truck #140 on December 14, 1983 [System Case 20.84; Local Case 8.84/012.22 (2nd S-D)].

(2) The Carrier also violated Rule 44 (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) Work Equipment Repairman L. Post shall be allowed eight (8) hours of pay at his straight time rate because of the aforesaid violations."

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 instant claim protested the fact the Carrier contracted out repairs to Truck No. 140 and the Carrier's failure to give advance notice of the subcontracting.

The basic facts are not disputed. There is no dispute that the repairs in question were performed by an outside concern. There is also no dispute advance notice was not given.

More importantly, the Carrier clearly acknowledges that repair work to Carrier-owned trucks is reserved to the Claimant's classification under the Scope Rule as applied by the Parties. It is stated in its Submission as follows:

> "Without argument or controversy, mechanical repair on Delaware and Hudson owned vehicles is the responsibility of MofW work equipment repairmen. . . Agreeably, MofW work equipment repairmen have the uncontested right of repair on D&H owned vehicles."

Instead, the Carrier defends the subcontracting on two other counts. First, it asserts the truck was leased and therefore beyond the scope of Article IV and second, it implies that the work was of an emergency nature. Thus, the Carrier argues no notice was required, nor was the Scope Rule violated in its opinion.

There is one very fundamental problem with the Carrier's defense. Neither of its theories or the factual assertions on which they are based were raised on the property. Therefore, these arguments cannot be considered.

This leaves the Board with the fact no notice was given and the fact the work is within the Scope Rule. Accordingly, the conclusion is inescapable that the Agreement was violated. However, no monetary damages are appropriate since the Claimant was fully employed and therefore there was no loss of earnings. Nor has a loss of work opportunity been demonstrated to our satisfaction.

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 20th day of July 1988.