

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman 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 Signal Department employees instead of Track Department employees to cut brush at and in the vicinity of Willsboro, New York beginning June 26, 1984 (System Case #3-85).

(2) Assistant Director-Labor Relations J. T. Delano failed to disallow the claim (appealed to him on February 1, 1985) as contractually stipulated within Paragraphs 2 and 4 of Rule 35(e).

(3) As a consequence of either or both (1) and/or (2) above, beginning June 26, 1984, Foreman G. Darrah and Trackmen H. Provost, D. Miller and L. Lashomb shall each be allowed:

'All time and overtime to be assessed through
S&C, and pay roll records.'"

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 Brotherhood of Railroad Signalmen was advised of the pendency of this dispute and filed a Submission.

This is a contract interpretation dispute initiated on September 7, 1984, by the Organization. The Organization claims that Carrier violated the Scope Rule when it assigned Signal Department employees to cut brush under pole lines.

A review of the record shows the facts and circumstances are essentially those already considered by this Board in Third Division Award 27652, wherein the central issue at bar is procedural.

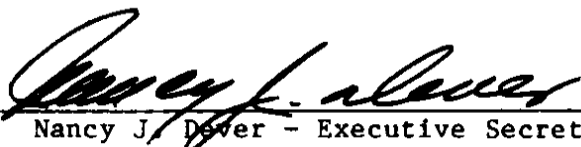
In that case by reference, as in this, the Board finds that the Carrier did not deny the Claim within 60 days. Without reaching the merits, Parts 2 and 3 of the Claim are sustained from June 26, 1984, until Carrier denied the Claim on May 20, 1985. This is consistent with numerous Awards of this Board, (e.g., Third Division Awards 26329, 24269, 19974; Fourth Division Award 4588).

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 16th day of December 1988.