

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman 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 Signal Department employees instead of Bridge and Building Department employees to paint battery boxes, relay cabins, signal poles, etc. in the vicinity of Rouses Point, New York beginning August 1, 1984 (System Case 5-85).

(2) Assistant Director-Labor Relations J. T. Delano failed to disallow the claim (appealed to him under date of February 5, 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 August 1, 1984, Mr. E. Dresser shall be allowed:

'all straight time and overtime, to be confirmed through S&C time sheets (daily work sheets) & payroll 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 August 30, 1984, by the Organization. The Organization claims that the Carrier violated the Scope Rule when it assigned Signal Department employees to paint signal equipment.

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. The Claim must therefore, be sustained. Without reaching the merits, this Claim is sustained from August 1, 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. Defer - Executive Secretary

Dated at Chicago, Illinois, this 16th day of December 1988.