

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 Agreement was violated when Trackman F. Scheu was not used to perform overtime service on his assigned section territory (Colonie Section) on August 5, 1984 (System File #10-85).

(2) Assistant Director-Labor Relations J. T. Delano failed to disallow the claim (appealed to him under date of March 12, 1985) as contractually stipulated within Rules 35(e)2 and 35(e)4.

(3) As a consequence of either (1) and/or (2) above, Claimant F. Scheu shall be allowed 'four hours pay at the time and one-half 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 employes 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.

This is a contract interpretation dispute initiated on September 28, 1984, by the Organization. The Organization claims that required repair work to a heat kink was performed by a Foreman rather than Claimant to whom the work contractually accrued. In the particulars of the instant case the Organization is arguing that the violation deprived Claimant of overtime work.

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.

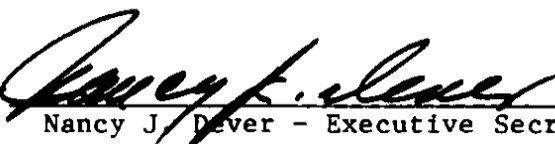
In that case by reference, as in this, the Board finds that the Carrier did not deny the Claim within 60 days. Without reaching the merits, parts 2 and 3 of the Claim are sustained on procedural grounds. See Third Division Award 19974 referred to in the above referenced Award.

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.