

PUBLIC LAW BOARD NO. 88

BROTHERHOOD OF RAILROAD TRAINMEN

VS.

DELAWARE AND HUDSON RAILROAD CORP.

AWARD NO. 12

CASE NO. 1.66

STATEMENT OF CLAIM:

Claim of conductors listed below on the dates specified for an additional day at yard rates. Claims are based on Article 5, Paragraph "D" of the Conductors' Agreement and Article V, Section 6 of the National Agreement dated June 25, 1964.

FINDINGS:

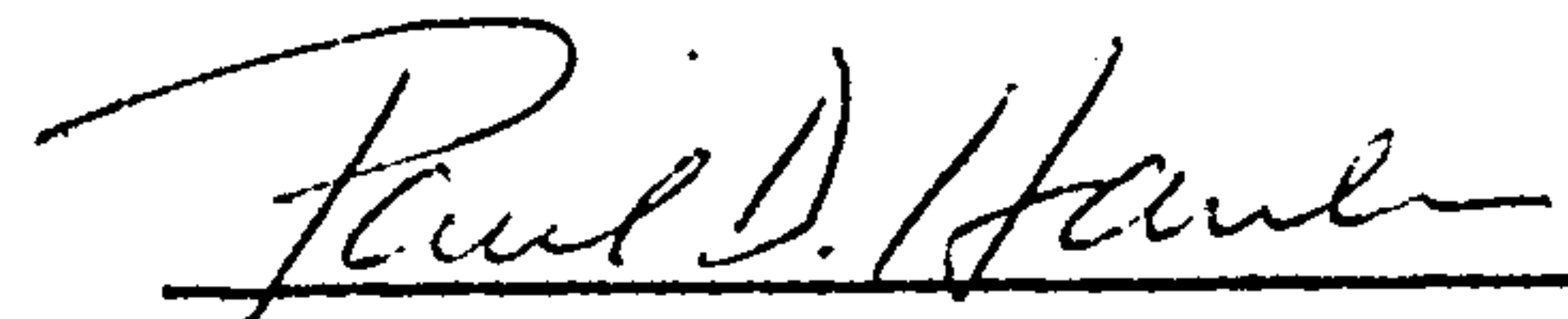
The claims on behalf of conductors on mine runs are based upon an allegation that these crews were required to perform general yard switching at Carbondale. During the processing of these claims on the property this basic and controlling fact was apparently never contested by the carrier. In its submission to this Board the carrier for the first time took issue on that point. It would seem strange indeed that the carrier would not have raised this contention as its first and strongest line of defense when the claim was originally presented and its failure to do so creates a presumption that the Organization's allegation is correct. The carrier has failed to submit any tangible evidence sufficient to rebut that presumption.

Holding as we do that general yard switching was done, the claims of the mine crews are supported by Award No. 144 of SBA No. 632 on this property which is directly in point.

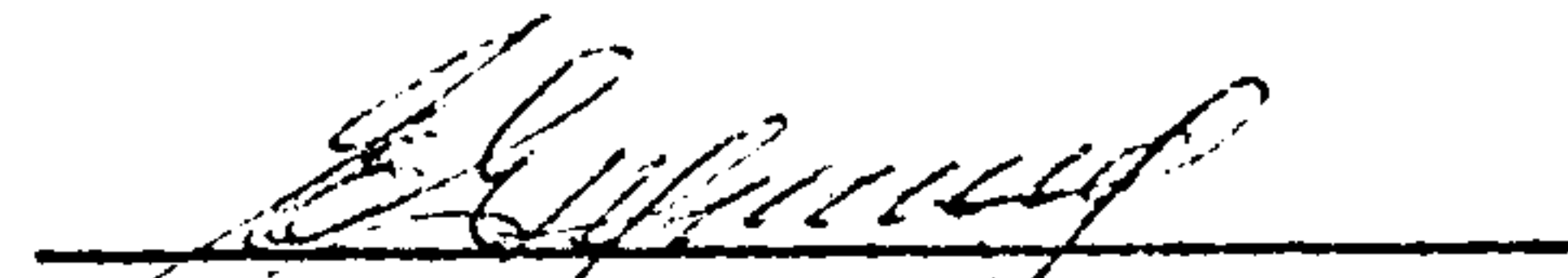
The claims of Conductor Carden for dates assigned to local freight train P-1 involve a different question. This exact point was also decided by SBA No. 632 in its denial Awards Nos. 146, 148, 150 and 155.


AWARD:

The claims on Conductors Foote and Barrett are sustained. The claims of Conductor Carden are denied.



Paul D. Hanlon
Chairman and Neutral Member


E. G. Young, Carrier Member


P. J. McNamara, Employee Member

Albany, New York

July 10, 1968

PUBLIC LAW BOARD NO. 88

PARTIES TO THE DISPUTE:

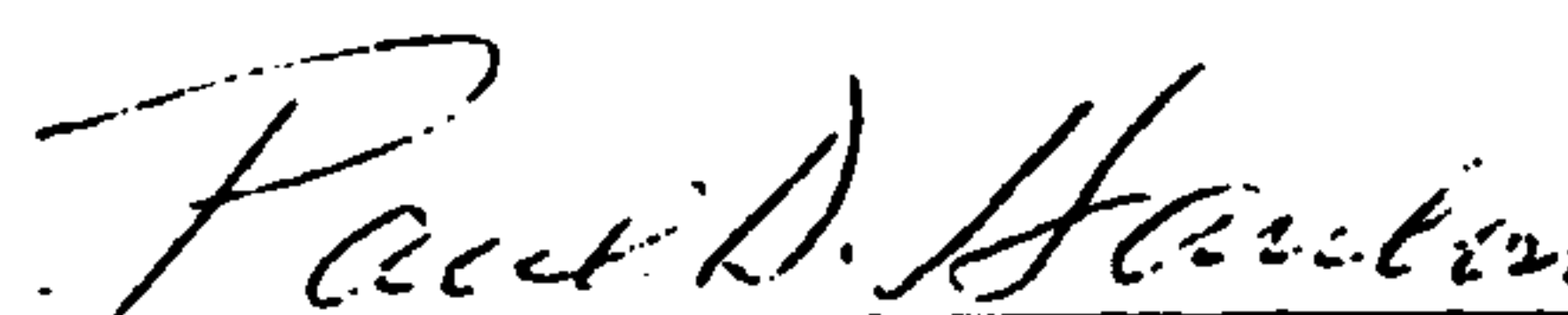
United Transportation Union (T)
and
Delaware & Hudson Railway Co.

INTERPRETATION OF AWARDS
12, 14, 15 and 16

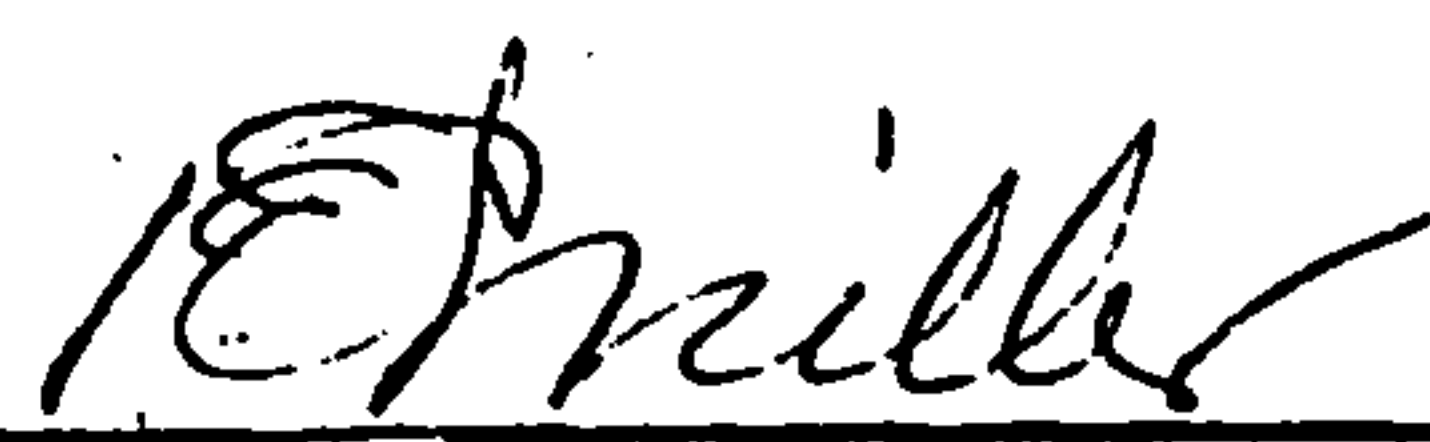
The parties have requested an interpretation of Awards 12, 14, 15 and 16 to determine whether the carrier in complying with those Awards has a right to deduct amounts allowed for time consumed in the additional service to the extent that it had already been paid for as overtime.

These claims were asserted for an additional day's pay and the claims were sustained as presented. The carrier raised no issue in its presentation to the Board as to its right to make any deductions and that new issue cannot now be raised.

The claims must be paid as presented and sustained without deductions.



Paul D. Hanlon
Chairman and Neutral Member



K.E. MILLER, Carrier Member



P. J. McNamara, Employee Member

Albany, New York
October 28, 1970