

**NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION**

**Award No. 13387  
Docket No. 13283  
99-2-97-2-58**

The Second Division consisted of the regular members and in addition Referee Robert L. Hicks when award was rendered.

**(Brotherhood Railway Carmen, Division of  
( Transportation Communications International Union**  
**PARTIES TO DISPUTE: (**  
**(Delaware & Hudson Railway Company, Inc.**

**STATEMENT OF CLAIM:**

**“Claim of the Committee of the Union that:**

- 1. That the Delaware and Hudson Railway Company violated the terms of our current agreement, in particular Rule 6.8 when they arbitrarily utilized an outside contractor to perform wrecking service without calling the regular assigned wreck crew.**
- 2. That, accordingly, the Delaware Hudson Railway Company be ordered to compensate J.P. Hough, R.E. Ives and V.P. Pettinato in the amount of nine (9) hours pay (\$142.02). This amount of compensation that this crew would have received if properly called by the carrier.”**

**FINDINGS:**

**The Second 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 employee 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 were given due notice of hearing thereon.

On August 12, 1996, four cars derailed blocking the entire west side of the Saratoga Yards and a customer's siding.

Carrier utilized the services of an outside contractor to rerail the four cars. The contractor's force consisted of two sidewinders, each with an Operator and three Groundmen. The contractor was on the property from 8:00 A.M. and until 12:00 Noon.

The Organization filed claim arguing that the Carrier was obligated by Rule 6 to call and utilize the services of the one and only wrecking crew headquartered at Binghamton, New York.

The Carrier defends its position by arguing that the Binghamton wrecker was not "reasonably accessible" as provided in Rule 6. The contractor was only 30 miles from the wreck, whereas the wrecking crew was approximately 170 miles away. The Carrier also defends its actions by referring to Appendix "L" which reads:

"This has reference to the handling of work pursuant to Rule 6 . . . It was agreed that . . . Emergency service in yards may be handled by Carmen at that point or by appropriate wrecking crew. . . ."

The Organization agreed in the on-property handling that emergency service at Saratoga, New York could be performed by Carmen, but it argues that although the Carrier called two Carmen to come to work from the overtime list at Saratoga, the two Carmen were not used to work in the rerailing project with the contractor, but were assigned to and worked on repairing bad order cars on the repair track.

The Board finds that the phrase contained in Rule 6.8 reading, "reasonably accessible to the wreck" leaves to the Carrier the right to determine if the wrecking crew is reasonably accessible. To the Board, the wrecking crew, which was located 170 miles from the wreck, was not reasonably accessible, whereas the contractor was located only 30 miles from the wreck.

Furthermore, the derailment occurred in the Saratoga Yards and Appendix "L" permits the Carrier to utilize Carmen at that yard to perform emergency service. The issue of whether the Carrier was in violation of Appendix "L" is not a matter for the

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**Board's consideration because the claim is on behalf of the Binghamton wrecking crew, not Saratoga Carmen.**

**Under the circumstances, the Board finds no merit to the instant claim.**

**AWARD**

**Claim denied.**

**ORDER**

**This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.**

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**By Order of Second Division**

**Dated at Chicago, Illinois, this 12th day of April 1999.**