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**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 13665
Docket No. 13557-T
01-2-00-2-37**

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

**(Brotherhood Railway Carmen Division
(Transportation Communications International Union
PARTIES TO DISPUTE: (
(Delaware and Hudson Railway Company**

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 43.2, Rule 6.8 and Letter of Understanding No. 1 when they failed to call Carman Thomas Carachilo for a derailment in Pittston, PA, instead allowing a trackman to perform carman duties on June 25, 1999.**
- 2. That, accordingly, the Delaware and Hudson Railway Company be ordered to compensate Carman Thomas Carachilo in the amount of twelve (12) hours pay at the overtime rate.”**

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.

As Third Party in Interest, the Brotherhood of Maintenance of Way Employees was advised of the pendency of this dispute and filed a Submission with the Board.

A six-car derailment occurred on June 25, 1999 at Pittston, Pennsylvania. The Carrier engaged the Hulcher Wrecking Service and assigned two of its three-member Carman Wrecking Crew to perform wrecking services. The Carrier also assigned a BMWE Trackman/Operator to run a machine identified as a 950 Loader to which he was regularly assigned. As to these assignments, there is no dispute between the parties.

The Organization contends, however, that the Trackman/Operator, beyond operation of his assigned machine, performed groundman duties that are reserved to Carman. On this basis, the Organization argues that the third Wrecking Crew member should have been called.

The Manager, Mechanical stated that he did not instruct the Trackman/Operator to perform such duties, nor did he observe him doing so. Statements by the Trackman/Operator and the two Carman Wrecking Crew members were to the effect that such wrecking crew work was performed by the Trackman/Operator. The Board finds it reasonable to accept such contention.

In sustaining the claim, the Board finds the requested remedy to be excessive. It is obvious that the Trackman/Operator was engaged in Carman duties for only a portion of his assignment. In addition, the request for pay at the overtime rate is excessive. The Award will provide that the Claimant be compensated six hours at the straight time rate.

AWARD

Claim sustained in accordance with the Findings.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 11th day of December, 2001.