

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13694

Docket No. 13580

02-2-00-2-60

The Second Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

**(Brotherhood of Railway Carmen Division
(Transportation Communications International Union**

PARTIES TO DISPUTE: (

(Delaware and Hudson Railway Company, Inc.

STATEMENT OF CLAIM:

“Claim of the Committee of the Union that:

- 1. The Delaware and Hudson Railway Company (Division of CP Rail) violated the terms of our current agreement, in particular Rules 43.2 and 49.1 when they failed to call Adam Green to perform regularly assigned carman duties in East Binghamton, NY Yard, instead allowing transportation employees to perform this work.**
- 2. That, accordingly, the Delaware and Hudson Railway Company be ordered to compensate Adam Green in the amount of two (2) hours and forty (40) minutes at the overtime rate. This is the amount he would have earned had the Carrier not violated the agreement.”**

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 31, 1999, a local freight crew armed a telemetry device, tested the dump feature and performed a road air brake test on Train 270 (a run through train from Buffalo going north toward Saratoga). The record shows that the work was performed at the Bevier Street Yard. This claim followed with the assertion that Carmen should have performed the work.

In Second Division Award 11700, the Board held:

“... [T]wo conditions [must exist] with regard to Carmen being entitled [to] such work. The first condition to be met is that Carmen must be employed in the service of the Carrier doing the work in the yard or terminal involved AND the second condition is that they must be on duty in the departure yard, coach yard or passenger terminal from which the train leaves.”

The burden is on the Organization. The record does not sufficiently show that Carmen were assigned to the Bevier Street Yard. The Organization has not carried its burden. The claim must be denied. Second Division Award 11700, supra.

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 December 2002.