

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13824
Docket No. 13713
05-2-03-2-58

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

PARTIES TO DISPUTE: (Brotherhood of Railway Carmen Division of TCU
(The Delaware and Hudson Railway Company (Division
(of CP Rail System)

STATEMENT OF CLAIM:

- “1. That the Delaware and Hudson Railway Company (Division of CP Rail System) violated the terms of our current Agreement, in particular Rules 43.2, 49.1 and 49.3, when they allowed a Utilityman to perform Carman duties at East Binghamton, NY Yard.
2. That, accordingly, the Delaware and Hudson Railway Company be ordered to compensate the Carmen as provided in this claim. This is the amount they would have earned had the Carrier complied with our 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.

This dispute boils down to the Organization's assertion that non-scope covered employees were assigned to apply certain end of train ("EOT") devices at the Carrier's East Binghamton Yard. Application of these EOT devices is not specifically reserved to scope covered employees by rule. Nor is there a showing by the Organization that application of these EOT devices is performed by scope covered employees exclusively on a system wide basis.

The Organization has not carried its burden. The claim shall therefore be denied.

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 1st day of April 2005.