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**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13827

Docket No. 13717

05-2-03-2-62

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 Rule 43.2 and Rule 7.2 when they failed to call, qualified Carman, V. J. Pettinato for overtime work on Saturday, March 8, 2003 and instead, allowed a Supervisor to perform Carman’s work.
2. That accordingly, the Delaware and Hudson Railway Company be required to compensate Carman V. J. Pettinato in the amount of eight (8) hours pay, at the over-time rate. This is the amount he 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.

The Organization asserts that on March 8, 2003, Manager J. Ragard "took the wheel reading off of four (4) pair of wheels and performed the work of writing up the repair to freight cards on seven (7) additional cars." The Organization then asserts a violation of the Rules 43.2 and 7.1 of the Agreement because Ragard — a supervisor — "perform[ed] work that accrues to the carman craft" and failed to call the Claimant for overtime.

The Carrier concedes that Manager Ragard "did record this information on the 'Bad Order' tags but at no time did Mr. Ragard enter this information into the CIM computer system". The Carrier further states that Manager Ragard "did in fact write certain repair information on the ... bad order cars, and marked cars as released on the daily release sheet.

Further, according to the Carrier, "the recording of information by a supervisor is not exclusive to the Carmen's craft." The Organization responded with a statement from the Lead Carman that he "never witnessed a supervisor performing this type of work in the past".

The Carrier also states that the work performed by Manager Ragard "took a total of about twenty (20) minutes to complete" and further asserts that "Mr. Ragard was present for eight (8) hours, the preponderance of this time performing the function of his manager's position." The Organization responded that "[t]his work entailed the full eight (8) hour period."

The facts in this record are in irreconcilable conflict. Exclusivity issues aside, this Board cannot tell if the disputed work performed by Manager Ragard took "the full eight (8) hour period" as argued by the Organization, or "twenty (20) minutes" as argued by the Carrier. Further, it is not clear through the presentation of undisputed or demonstrated evidence precisely what work Manager Ragard performed and to what extent Manager Ragard performed that work. But, the burden is on the Organization to demonstrate all of the elements of its claim. A

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record such as this which is in dispute on the most crucial issues cannot be a basis to sustain the Organization's burden.

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.