

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION**

Award No. 13190

Docket No. 13059

97-2-95-2-79

The Second Division consisted of the regular members and in addition Referee Margo R. Newman 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. The Carrier violated the Agreement when they failed to properly call the overtime board for road work at Saratoga, New York yard for May 23, 24, 25, and 26, 1994.**

**2. The Carrier shall now compensate the Claimant, Carman Edward Nobles for forty seven (47) hours at the pro rata rate for the following days: 5/23-10 hours, 5/24-12.50 hours, 5/25-11.5 hours and 5/26-13 hours."**

**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 claim arises from Carrier's assignment of a first shift employee instead of calling an employee from the Overtime Board to supplement the road truck and Driver to perform four days of repair work at Saratoga, New York, between May 23 and 26, 1994. There is no dispute that Claimant was first out on the overtime list on May 23, 1994 while the employee selected to accompany the road truck was near the bottom of such list, but was a regularly assigned first shift employee.**

**The Organization argues that while the Road Truck Driver is a regular assigned position, the Helper, when needed, is not. It contends that because overtime accrues to the road truck, Carrier should not have used the Overtime Board to select the employee to assist in the road truck assignment. It relies upon the language of Rule 7.2 which states, in pertinent part:**

**"There will be an overtime call list (or call board) established for the respective crafts or classes at the various shops or in the various departments, as may be agreed upon locally to meet service requirements, preferably by employees who volunteer for overtime service...."**

**Carrier asserts that historically when additional staff are required to accompany the road truck, employees from the day shift are offered the assignment in seniority order, and that employees are not called from the Overtime Board to supplement the staff of the road truck. Carrier further notes that most of the work done on this assignment was performed during day shift hours, and that only a minimal amount of overtime work actually accrued to this assignment. It contends that the fact that employees were to be away from home for four days does not trigger the application of Rule 7.2, which it argues does not apply herein.**

**A careful review of the record convinces the Board that Carrier has proven a past practice which establishes that day shift employees are traditionally offered the assignment to accompany the road truck when help is needed, and that the Overtime Board is not used to supplement the staff of the road truck, regardless of whether overtime is actually worked or contemplated. This practice permits Carrier to pay straight time rates for the bulk of the work, rather than overtime for all work performed under such assignment.**

**In the instant case, the Organization asserted in its correspondence on the property that "normal road truck work is scheduled for days when the operator and**

employees are readily available.” There is nothing in the record to indicate that the work in issue was anything other than “normal road truck work.” We find that the Organization failed to sustain its burden of proving that the language of Rule 7.2 was violated in this instance or requires Carrier to utilize an employee from the overtime call list on road truck assignments such as this. See Third Division Award 31645. Accordingly, we find the claim to be without merit.

**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 23rd day of December 1997.**