

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13196

Docket No. 13118

98-2-96-2-22

The Second Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

(Brotherhood Railway Carmen, Division of
(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. That the Delaware and Hudson Railway Company, (Division of CP Rail System) hereinafter 'Carrier' violated the labor agreement when they allowed employees from Consolidated Railcar Maintenance Company to perform Carman's duties on our repair track at Buffalo, NY yard, from October 17, 1994 to and including November 11, 1994.
2. That, accordingly, the Delaware and Hudson Railway Company be ordered to compensate furloughed Carmen James P. Young and James V. Austin, a total of twenty-five (25) days, nine (9) hours each day, at the rate of \$15.51 per hour for a total of \$3489.75 each. William E. Barcomb, Kenneth Brelia and Albert J. Barcomb twenty (20) days, nine (9) hours each day, at the rate of \$15.51 per hour for a total of \$2791.80 each."

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 is a dispute about work performed by employees of the Consolidated Railcar Maintenance Company during the period of October 17 to November 11, 1994. The Organization asserts a violation of Rule 43.2, the Classification of Work Rule, as well as Rules 22.2 and 22.10, which address seniority.

The undisputed facts show that the work at issue was performed on DH 12000 series covered hoppers. The Carrier's lease of these hoppers terminated on April 30, 1994. The owner of the hoppers was Norail. Norail selected the Consolidated Railcar Maintenance Company to perform the work.

The Organization, however, claimed that the Carrier permitted the employees of Consolidated Railcar Maintenance Company to perform the repair work on the Carrier's property. Accordingly, it argues, because the track on which the hoppers were repaired belongs to the Carrier, the work is covered under the collective bargaining Agreement between the parties.

The facts as we find them from the record developed on the property show that the Carrier leases 820 feet of the Eastbound Main Track at Buffalo, New York, from Conrail. It is this 820 feet of track which the Carrier uses when its employees make repairs on railcars. The hopper cars were not on the track that the Carrier leases.

Numerous Awards emanating from this Board as well as Public Law Boards have consistently held that Classification of Work Rules and/or Scope Rules apply only to work under the control of the Carrier. Among many Awards, see Second Division Awards 11574, 10980, and 8053. The Organization, on the property, did not provide any Awards to counter these holdings.

In summary, we concur with the reasoning of the Awards cited above which have addressed the same issue. Therefore, the claim must be denied.

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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 11th day of February 1998.