

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13376

Docket No. 13250

99-2-97-2-16

The Second Division consisted of the regular members and in addition Referee Elizabeth C. Wesman 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. That the Delaware and Hudson Railway Company (Division of CP Rail) violated the terms of our current agreement, in particular Rule 43.2, when they arbitrarily assigned a supervisor to perform carman’s duties.**
- 2. That, accordingly, the Delaware and Hudson Railway Company be ordered to compensate Carman Jack Hough in the amount of seven and one-half (7 ½) hours at the overtime rate. This is the amount of compensation he would have received if he were properly called.”**

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 April 25, 1996, at approximately 11:30 P.M., a Supervisor not covered by the Agreement drove to Oneonta, New York, to investigate trouble on Train 271 en route from Saratoga, New York. Following his inspection of the problem, the Supervisor cut out the air from two cars, and accompanied the train the remainder of its trip to Binghamton Yard. On May 5, the Organization filed the instant claim, which was denied on May 17, 1996, and subsequently progressed in the usual manner, including conference on the property, after which it remained in dispute.

A review of the record before the Board yields convincing evidence that the Supervisor was, in fact performing Carmen's work. Moreover, the Carrier asserted, but has not proven, that there was an emergency. The Organization contended in its correspondence on the property that no such emergency existed, and the Carrier did not buttress its statement that an emergency actually existed by presentation of further evidence. Accordingly, the Carrier violated Rule 43.2 when it allowed an employee not covered by the Carmen's Agreement to perform the work at issue. Thus, some compensation is due Claimant. (Second Division Awards 6635, 10715, 12295).

Notwithstanding the foregoing, however, the Organization did not prove that its estimation of the time taken to perform the disputed work was accurate. The Carrier contended that the actual amount of time involved was minutes, rather than hours. The Organization has not shown that the Carrier's estimate was incorrect. Accordingly, the Board will follow long-established tradition in such cases and award the Claimant a call. See Second Division Awards 7594, 8029, 10714.

AWARD

Claim sustained in accordance with the Findings.

Form 1
Page 3

Award No. 13376
Docket No. 13250
99-2-97-2-16

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 12th day of April 1999.