

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13702

Docket No. 13581

03-2-00-2-61

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

(Brotherhood of Railway Carmen Division

(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. The Delaware and Hudson Railway Company (Division of CP Rail) violated the terms of our current agreement, in particular Rules 43.14 when they failed to call the regular assigned road truck operator, V. J. Pettinato and assistant, T. K. Lawrenson for road work at Sanataria Springs, NY on September 2, 1999.
2. That, accordingly, the Delaware and Hudson Railway Company be ordered to compensate V. J. Pettinato and T. K. Lawrenson in the amount of two (2) hours and forty (40) minutes each, at the overtime rate. This is the amount they would have earned had the carrier not violated the 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.

On September 2, 1999, the Carrier assigned on-duty Binghamton, New York, Carman M. Loveland to assist a Conductor who requested help changing a broken air hose on a gondola car on a train stopped on the single track mainline at Sanataria Springs, New York. Loveland voluntarily used his own car (for which he was compensated) to get to the location of the train. Further, the location of the train was in an area enroute to Loveland's residence. After completing the work (Loveland supplied an extra wrench needed by the Conductor and assisted him in changing the air hose), Loveland went off duty and proceeded on to his residence. According to the Carrier, Loveland completed the work before the end of his shift.

Claimant Pettinato was an on call Carman at Binghamton. Claimant Lawrenson was first out on the Binghamton Carman Overtime Board. Claim was filed on the Claimants' behalf asserting that they should have been called for the assignment as road truck employees pursuant to Rule 43.14 - ROAD REPAIRS, which reads as follows:

"When necessary to repair cars on the road or away from the shops, carman and helper when necessary, will be sent out to perform such work as putting in couplers, draft rods, draft timbers, arch bars, center pins, putting cars on center, truss rods, and wheels, and work of similar character."

The Organization has not carried its burden to demonstrate that the Carrier violated Rule 43.14 when the Claimants were not assigned the work of assisting with the repair of the broken air hose. The record shows that the incident occurred on the single track mainline where train crews can change defective train line hoses; an on-duty Carman (Loveland) was sent to assist with the change because the Conductor needed another wrench; and, after completing the assignment within his shift, Loveland went off duty and was allowed to continue on his route to his residence. The Organization has not shown that under the circumstances Rule 43.14 clearly entitled the Claimants to perform this work.

AWARD

Claim denied.

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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 31st day of January, 2003.