

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13862
Docket No. 13747
05-2-04-2-25

The Second Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

(Brotherhood Railway Carmen Division
(Transportation Communications International Union

PARTIES TO DISPUTE: (

(Delaware and Hudson Railway Company, Inc.

STATEMENT OF CLAIM:

- “1. That the Delaware and Hudson Railway Company (Division of CP Rail) violated the terms of our current Agreement, in Particular Rule 7.2 when they failed to properly call the overtime board on Monday, December 15, 2003, at Saratoga, New York.
2. That accordingly, the Delaware and Hudson Railway Company be required to compensate Carman J. N. Alaska in the amount of seven (7) hours at the overtime 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 claim is made by the Organization that on Monday, December 15, 2003, at Binghamton, New York, the Claimant was first out on the rotated overtime board and available for duty. The Organization alleges that the Claimant called, was advised that he could not work and thereafter another employee was permitted to perform the overtime assignment in violation of Rule 7.2. That Rule states in pertinent part that:

"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..."

The Carrier denied the claim. It pointed to the fact that a Carmen called off due to a snow storm and overtime was approved. However, the Organization maintains the overtime call list and if the call was inappropriately made, it is the Organization that is at fault. It also argued on property that there was no proof establishing an incorrect call for overtime.

The Board has carefully reviewed this claim. The Carrier has initially argued a fatal procedural error in that the claim on the property was for an improper overtime call at "Binghamton, NY" while the claim filed before the Second Division was for "Saratoga, New York." The Board notes that every other word of the claim on property is identical to the claim before the Board. Such error is inconsequential, obviously irrelevant and will not dissuade this Board from consideration of merits.

On merits, the facts are that Rule 7.2 is to assure the equal distribution of overtime among those employees who preferably volunteer. The Carrier

argued throughout the dispute, that there was no evidence that the Claimant was in fact first out to be called on December 15, 2003. The call list was never presented by the Organization. Even if the Claimant was first out and not used, this Board can not determine that he would have been denied an equal distribution of overtime due to this one instance. Accordingly, the Board will deny the claim.

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 27th day of July 2005.