

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 13869
Docket No. 13746
05-2-04-2-24

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: (

(The Delaware and Hudson Railway Company

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 43.2 and 7.2 when they arbitrarily assigned Binghamton Carmen to perform Carman duties at Kenwood, NY (a separate seniority roster) on Monday, November 17, 2003.
2. That accordingly, the Delaware and Hudson Railway Company be required to compensate Carman J. N. Alasky in the amount of six (6) 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.

On November 17, 2003 the Saratoga road truck was out of service. Two Carmen from Binghamton, New York were assigned to take their road truck to Buffalo to repair a freight car at Kenwood Yard. They performed overtime service for six hours.

The Organization alleges violation of Rule 7.2 in that by practice and Agreement, Binghamton Carmen who hold no seniority in the Capital District (including Kenwood where the Intermodal car was repaired) may work that district only after all employees in the Capital District have been called for overtime. In this case, the Claimant was not called.

The Carrier maintains on property that had the Saratoga Road Truck been in service, the Binghamton Road Truck would have gone to Buffalo and not made the side trip to Kenwood. There was no other Carrier equipment available. The Carrier maintains that the Carmen have performed Carmen's work previously under exact facts without claims filed. It also notes that the Claimant has only system seniority and is junior to the two Carmen who performed the work. It maintains no violation occurred.

The record on this property is persuasive to this Board that Rule 7.2 was violated. That Rule states:

"There will be an overtime call list established for the respective crafts . . . as may be agreed upon locally, to meet service requirements, preferable by employees who volunteer for overtime service."

There is no relevance in this record to the lack of a Saratoga Road Truck to the instant facts. The Organization alleged that there was practice on this property that was violated by the Carrier's actions. Specifically, we find no persuasive evidence to refute the Organization's position that "past practice in the Capital District, was to allow Binghamton, NY employees to work in this district only if they called the overtime board." Nor do we find any evidence to rebut the Organization's position

that “[t]raditionally, the Carrier called all available Carmen from Saratoga and Kenwood (Capital District) to work when the road truck from Binghamton was on the property to perform service.”

Carrier argued that there had been no past claims, but the Organization stated that that was due to the fact that the Carrier always called all the Capital District Carmen under these circumstances. Carrier argued issues of seniority, but the Organization maintained that the Claimant had a bid position in the Capital District and was not called, while the employees from Binghamton did not hold a bid position. We have carefully studied all of the Carrier’s on-property arguments and do not find them persuasive. The Board finds that the Organization has met its burden of proof. The claim must be sustained.

AWARD

Claim sustained.

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 7th day of September 2005.