

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION**

**Award No. 14004  
Docket No. 13871  
09-2-NRAB-00002-080021**

**The Second Division consisted of the regular members and in addition Referee Joseph M. Fagnani when award was rendered.**

**PARTIES TO DISPUTE: (**  
**(Brotherhood of Railway Carmen Division - TCU**  
**(Delaware and Hudson Railway Company**

**STATEMENT OF CLAIM:**

- “1. That the Delaware & Hudson Railway Company violated the terms of our current Agreement, in particular Rules 4.1 and 4.4, when they allowed Carman Steven Cross to work past his regular shift and work until 7:00 p.m. without the benefit of compensating him with overtime.**
- 2. That accordingly, the Delaware & Hudson Railway Company be required to compensate Carman Steven Cross with compensation for four (4) hours at the rate of ½ time for the overtime he was not allowed as a result of working past his regular hours of service.”**

**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 January 17, 2007, the Claimant reported to work at 11:00 A.M. for a return- to-work safety meeting with the Mechanical Manager following an extended absence from work. After the meeting, the Claimant requested a list of Carmen positions available to him for displacement in accordance with Rule 22.14 of the Agreement. The Claimant stated that he would review the list and decide on which position he wished to displace later that day. The Claimant expressed concern that he would not be compensated for eight hours for that day due to his late start. The Mechanical Manager offered the Claimant the opportunity to work until 7:00 P.M. that date. The Claimant agreed to this suggestion and worked until 7:00 P.M. and was paid eight hours straight time for this service.**

**The claim before the Board asserts that the Claimant should have been paid at the overtime rate from 3:00 P.M. to 7:00 P.M., despite that fact that on the claim date he only worked from 11:00 A.M. to 3:00 P.M. This contention is based on the fact that at approximately 12:55 P.M., after the Claimant had agreed to the work opportunity offered by the Mechanical Manager, the Claimant submitted a written note indicating that he wished to displace onto a position with a 7:00 A.M. to 3:00 P.M., tour of duty. The Claimant's theory is that the time after 3:00 P.M. was beyond his regular tour of duty even though he did not indicate his desire to displace on the position until 12:55 P.M.**

**The Board has been furnished a document entitled "Release of All Claims" signed by the Claimant on August 26, 2008, in connection with a monetary settlement received by the Claimant from the Carrier. The following statement agreed to by the Claimant is contained therein:**

**"... I, Stephen T. Cross, hereby fully release and waive any labor claims, employment claims . . . which I may now have or hereafter have against the parties released herein."**

**The Claimant signed the release in his own signature and further attested that "I hereby certify I have read and fully understand the above release."**

**In light of the above, the Board finds that the claim now before it is covered by the terms of such release and is, therefore, moot. Accordingly, the Board is constrained to dismiss the claim without reference to its merits, if any. (See Second Division Award 13034 as well as Third Division Awards 23932 and 26345.)**

**AWARD**

**Claim dismissed.**

**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 8th day of May 2009.**