

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 14031
Docket No. 13907
10-2-NRAB-00002-090018**

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

PARTIES TO DISPUTE: (
(Brotherhood Railway Carmen Division - TCIU
(The Delaware and Hudson Railway Company

STATEMENT OF CLAIM:

- “1. That the Delaware and Hudson Railway Company violated the terms of our current Agreement, in particular Rules 43.2, 49.1, 49.3 and 23.1, when they ordered or otherwise allowed a utility trainman to perform the duties originally held by Carmen at Saratoga Yard.**
- 2. That accordingly, the Delaware and Hudson Railway Company be required to compensate Carman Thomas Norris and Lee St. Gelais in the amount of eight (8) hours each day at the overtime rate for each day this inequity continues. This is the amount they would have earned had the Carrier not violated 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 March 1, 2008, the Local Chairman at Binghamton, New York, wrote Mechanical Operation Manager A. J. Troccia alleging that the Carrier had violated the above-identified Agreement Rules by permitting a UTU – represented Utility Person to perform Carman duties at Saratoga Yard and requesting compensation on behalf of two Carmen allegedly aggrieved by the violations.

By letter dated April 28, 2008, the Mechanical Operation Manager replied, indicating in part, as follows:

“As you are well aware . . . two years ago the Carrier redesigned its operations at the Saratoga Yards, and eliminated the redundancy of work performed by the Management Staff, Yard Switching Crews and Mechanical Staff.

In February of this year it was agreed upon, between myself and UTU General Chairman Carmine Mastropietro to assign a Utility Person to help in the expediting of trains in and out of Saratoga yard, on a trial basis.

The duties of this Utility Person is to assist trains crews with doubling over of outbound trains, the setting over of inbound trains.

Mr. Fancher, all Carmen’s work is being performed by the Carmen’s craft. If you have any specific dates, times and Carmen’s work performed by this Utility Person please pass them on for my review.”

In response to the foregoing, the BRC International Representative wrote to the Carrier’s Labor Relations unit indicating an appeal would be taken, and stating, in part that:

“. . . It doesn’t matter what A. J. Troccia and Carmine Mastropietro agreed upon. This is about the Carman craft, not the UTU craft. The UTU craft does whatever it feels best for them, however, it is the Carman craft that is affected. . . . In response [to Fancher’s requests for specifics] [t]he Carrier is having this Utility Person perform this work every day at Saratoga Yard. The Carrier claims that they do not dispute the fact that a

Utility Person was assigned to work with train crews to assist with doubling over of outbound trains, the setting over of inbound trains . . . they do much more than that. This Utility Person gives Road Tests and couples cars in inbound trains after they have been switched. . . .”

Successive correspondence between the parties, as well as the Submissions of both the Carrier and the Organization, inform the Board of the historical background underlying the dispute. Until 2006, Saratoga Yard had operated on a 24-7 basis employing Yard Crews, Local Freight Crews, a Yardmaster, Carmen, a Manager of Road Operations and Terminal Coordinators. In 2006, operations were modified to eliminate redundancies, i.e., switching operations were discontinued and the yard became a static yard with road crews simply setting off and picking up on designated tracks in the yard. The need for Mechanics was eliminated, their positions abolished and except for two positions, Carmen previously required to inspect rail cars once processed in and out moved by exercise of their seniority. In February 2008, a Utility Person was then assigned to expedite trains in and out of Saratoga Yard.

The Organization correctly articulates the broad principles applicable to the unilateral transfer of exclusive Carmen duties to others where Carmen are employed to perform such work. In this instance, however, it failed to provide any specifics establishing that the Utility Person performed work comprehended by the Carmen’s Classification of Work Rule provisions. The Carrier insisted that the Trainman did nothing other than assist with coupling the train. Despite its requests at two appeal levels for details on times and dates other work, such as performing an airbrake test, was accomplished by a Utility Person, no such information was ever forthcoming.

In view of the foregoing, the Organization failed to establish a prima facie case. The claim must be denied for lack of proof.

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.

Form 1
Page 4

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 3rd day of November 2010.