

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION**

Award No. 13672

Docket No. 13556

02-2-00-2-36

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

**(Brotherhood 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. That the Delaware and Hudson Railway Company (Division of CP Rail) violated the terms of our current agreement, in particular Rule 26.1 when they arbitrarily assessed the record of Jack Hough, with ten (10) demerits as a result of an investigation held on April 29, 1999.
2. That, accordingly, the Delaware and Hudson Railway Company be ordered to remove the discipline and all related correspondence from the record and file of Carman Jack Hough.”

**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.

Following an investigative Hearing, the Claimant was assessed a disciplinary penalty of ten demerits in reference to an occurrence which the Organization summarizes as follows:

**“On March 8, 1999, at approximately 4:50 P.M. the claimant was ordered by the yardmaster to go to the west end of No. 1 Running Track to work Train 521. The rear of the train rested between the repair track and No. 1 Running Track. As the claimant proceeded between No. 1 Running Track and the repair track, the 4-Wheel ‘Gator’ he was driving slid on the snow and ice, striking the rear car of Train 521.”**

**There is no dispute as to the accuracy of this account.**

**The Carrier charged the Claimant with violation of ten Safety Rules. The Board finds citation of most of these Rules simply redundant. Nevertheless, the central issue remained as to whether the Claimant failed to operate his vehicle in a manner which could have avoided the accident and the resulting damage.**

**The Carrier argued that the Claimant recognized the hazardous condition of the roadway. The Claimant stated his awareness of “close clearance” in attempting to reach his work area. In sum, there is support for the conclusion that the Claimant failed to follow the basic principle, “In case of doubt, the safe course must be followed.” The Board concludes that the corrective discipline was appropriately applied.**

**Two procedural matters require discussion. The Organization argued the Hearing was defective in that the Charging Officer was not present. As pointed out by the Carrier, the Charging Officer served only an administrative function in issuing the charge, and there was no showing that she would have been able to provide pertinent testimony as to the incident itself.**

**The Organization also argued that further discussion at the Hearing should have been permitted concerning previous allegedly similar incidents in which no charges were initiated. While the Organization is, of course, entitled to claim disparate treatment, this rarely warrants a full review of such matters within the Hearing itself.**

**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 11th day of February, 2002.**