

PUBLIC LAW BOARD – NO. 6461

Case No. 16

Award No. 16

PARTIES

Brotherhood of Maintenance of Way Employees

to

-and-

DISPUTE:

Grand Trunk Western Railway

STATEMENT OF CLAIM:

Appeal of the discipline of a 4-day suspension
imposed on Justin Macko.

FINDINGS; This dispute arose as a result of the Carrier charging the claimant with the following
offense:

“Your alleged violation of Canadian National / Illinois Central
Railroad On-Track Safety Rules effective June 2nd, 2002,
Rule 100 which reads as follows:

SECTION 1: INTRODUCTION

100. Fouling the Track

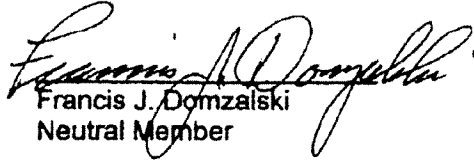
Each roadway worker is responsible for determining that
on-track safety is provided before fouling any track or
assuming a position from which he or she could potentially
foul a track.

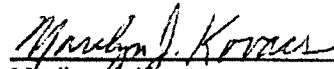
A roadway worker or roadway machine is fouling a track
within four feet of the field side of the near running rail.


This incident occurred when you parked Aspen Truck #572346
within the four foot fouling point at Milepost 102.5, Holly subdivision,
and were struck by Train 393 traveling West at approximately 12:25 pm
on September 18th, 2003 causing damage to the passenger side door
and fender of the vehicle.”

At the September 23, 2003 formal investigation, the claimant was forthright and admitted that
he made a mistake by parking his truck too close to the track with the door left open, and took
full responsibility for fouling the track. Therefore, based on claimant's admission of guilt, the
Board concludes the Carrier did not misuse its discretion when it assessed discipline, thus I will
not intervene in this matter.

AWARD: The claim is denied.


Francis J. Domzalski
Neutral Member


Marilyn G. Kovacs
Carrier Member


Perry K. Geller, Sr.
Organization Member

Dated: 6-26-04