

PUBLIC LAW BOARD NO. 6493

PARTIES TO THE DISPUTE:

DELAWARE & HUDSON RAILWAY COMPANY, INC.

- and -

BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYEES

STATEMENT OF CLAIM:

Case No. 1: Claim the System Committee of the Brotherhood that:

(1) The discipline (twenty (20) demerits) imposed upon Mr. D. L. Ambrose for alleged failure to comply with NORAC Rule D and Rules 21 and 22 of the Collective Bargaining Agreement, in connection with alleged falsification of November and December 2000 expense documents, was arbitrary, capricious, unwarranted and in violation of the Agreement (Carrier's File 8-00184 DHR).

(2) As a consequence of the violation referred to in Part (1) above, the twenty (20) demerits shall be removed from Mr. D. L. Ambrose's record.

Case No. 1A: Claim of the System Committee of the Brotherhood that:

(1) The discipline (dismissal) imposed upon Mr. D. L. Ambrose for alleged failure to Comply with NORAC Rule D and Rule 21.5 of the Collective Bargaining Agreement, in connection with claiming personal auto miles on December 2000 expense document, was arbitrary, capricious and in violation of the Agreement (Carrier's File 8-00184001).

(2) As a consequence of the violation referred to in Part (1) above, Mr. D. L. Ambrose Shall '... be immediately reinstated as an employee of the D&H without prejudice. Also, any wages and benefits that were lost due to his termination should be forthcoming.

Public Law Board 6493 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 employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Board has jurisdiction over the dispute involved herein.

Parties to said dispute exercised the right to appearance at hearing thereon.

OPINION OF BOARD:

Trackmen and Track Foremen employed by the Delaware & Hudson Railway Company, Inc. ("Carrier") are subject to the terms of the Collective Bargaining Agreement between Carrier and the Brotherhood of Maintenance of Way Employees ("Organization"). Mr. David L. Ambrose ("Claimant") was employed by Carrier as a Trackman and Track Foreman, from April 1998 until his termination on February 16, 2001, for alleged falsification of expense claims during the months of November-December 2000.

Carrier notified Claimant on January 5, 2002 to attend a formal investigation on January 12, 2001, into charges that he had used a improper address to claim lodging and mileage expenses to which he was not entitled. Three days after that investigation, Claimant sent Carrier a letter dated January 15, 2001, reading in pertinent part as follows:

Enclosed are Two (2), corrected expenses for myself for the months of November, and December 2000. On January 12, 2001, the Carrier held an investigation regarding my expense's accounts.

After the investigation I realized my mistake that I was filing the expense account from my residency rather than from my mailing address which I have listed with the Carrier. Also, in filing my mileage from the motel to the headquarters to pick up the Daily Bulletin Order (D.B.O.), I was under the impression that I was entitled to the mileage expense from the motel. The reason I thought that was Mr. Wetsel and Mr. Kane told me that since I did not have a company vehicle any more I would get reimbursed for all mileage.

I realize that I have made a serious clerical error in filing out my expense account.

I have no desire to discredit the Company in any manor what so ever. This is why I have taken the time

AWARD NO. 1
NMB CASE NO. 1
UNION CASE NO. 1 and 1A
COMPANY CASE NO. 1 and 1A

to redo my -expense account and to submit it to the Company. I trust that the Carrier will accept the corrected expense account and realize that I have made a mistake in filing out my monthly expenses.

Based on the record of that first investigation, including the above-quoted letter Carrier found Claimant culpable as charged and assessed his record twenty (20) demerits on January 26, 2001. On that same date, however, Carrier cited Claimant for an additional charge that his amended mileage claims for November-December 2000, which he of re-submitted with his letter of January 15, 2001 were also false, since he had been supplied with a Company truck for transportation on December 11 and 15, 2002, dates for which he claimed personal vehicle mileage. Following another formal investigation on February 2, 2001, at which the charges were proven, Carrier notified Claimant of his termination, effective February 16, 2001.

There can be no question that Claimant's admitted and proven violations of applicable rules governing expense reimbursement constitute serious misconduct which no employer is required to tolerate. At the arbitration hearing before this Board, Claimant was ably represented by the Organization; but he also personally appeared and requested leave to make a statement in his own behalf. Mr. Ambrose freely acknowledged his culpability, expressed remorse, apologized for his violations of Carrier's trust and conceded that disciplinary action against him was warranted. He also stated that he had "learned a hard lesson" and asserted that he had sought and received EAP assistance for alcohol abuse.

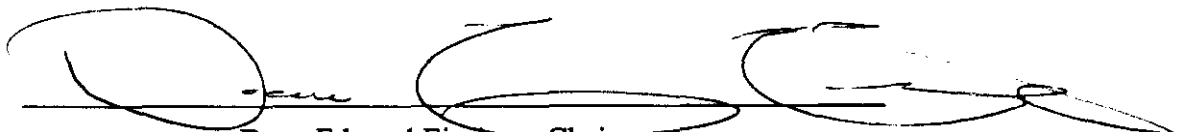
Based on the unique facts and circumstances of this record, on a non-precedent and non-referable basis, this Board modifies the penalty to a suspension without pay for time served. Carrier is directed to offer Claimant conditional reinstatement, with seniority date unimpaired but without back pay or benefits, under terms set forth in the Award, *infra*.

AWARD

Case No. 1– Claim denied.

Case No. 1A– Claim sustained in part and denied in part, as follows:

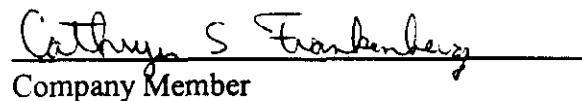
- 1) The discipline of dismissal is modified to a suspension without pay for time held out of service.
- 2) Carrier shall allow Claimant an opportunity to demonstrate that he can be a responsible and reliable employee, by offering him a return to service with seniority unimpaired but without back pay or benefits for time held out of service, conditioned upon Claimant providing certification from EAP that he is cleared to return to work and passing normally required return to work medical and rule examinations.
- 3) Carrier shall implement this Award within thirty (30) days of its execution by a majority of the Board.
- 4) Jurisdiction is retained for the sole purpose of resolving any disputes which may arise between the Parties regarding the meaning, application or implementation of this Award.



Dana Edward Eischen, Chairman



Union Member



Cathryn S. Frankenberg
Company Member