

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. 10: Claim the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier assigned Seniority Territory No. 3 employees M. Berner, L. Jackson and J. Vredenburg to perform work (surface track and other tasks) on Seniority Territory No. 2 at CPF 480 and in Mohawk yard on March 8, 2002, instead of Seniority Territory No. 2 employees W. Yafchak, D. Underwood, and A. Spencer (Carrier File 8-00256 DHR).

(2) As a consequence of the violation referred to in part (1) above, Claimants W. Yafchak, D. Underwood and A. Spencu shall now be compensated for six (6) hours' pay at their respective straight time rates of pay.

Public Law Board 6493 upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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"). As in the companion case decided

in Award No. 9, the facts in this case are not in material dispute (except for Carrier's assertion that there is a mutually recognized "past practice" since 1990 concerning the interpretation and application of Appendix "J", which is contested by the Organization).

The three (3) named Claimants, W. Yafchak, D. Underwood, and A. Spencer, were furloughed and awaiting recall to positions in Seniority Territory #2 at the time that this dispute arose, all three Claimants. On March 8, 2002, the Carrier assigned Seniority Territory #3 employees Berner, Jackson and Vredenburg to perform work (surface track and other tasks) in the vicinity of CPF 480 and on the Freight Main Line in Mohawk Yard; located on the Susquehanna Subdivision within Seniority Territory #2. Claimants were available for duty on Friday, March 8, 2002, fully qualified and willing to perform the work in their Seniority Territory #2, but were not afforded the opportunity by the Carrier. The employees from Seniority Territory #3, Messrs. Berner, Jackson and Vredenburg expended six (6) hours each at their respective straight-time rates of pay in the performance of this work on Seniority Territory #2.

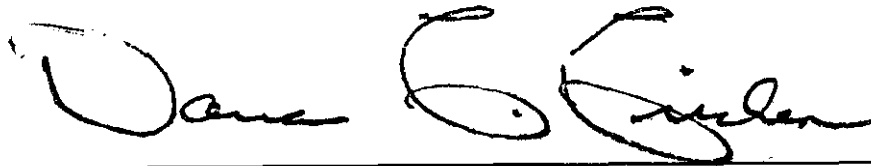
The Organization filed timely claims asserting violations of Rule 4.13, which Carrier denied at all levels of handling. In denying the claims, Carrier relied principally on the basis of the limited exceptions to strict application of Rule 4.13 set forth in Appendix J, *supra*. For reasons explained fully in Award No. 9, and with the same disclaimers and limitations expressed therein, the instant claims also are sustained.

AWARD



1) Claims sustained.

2 Carrier shall implement this Award within thirty (30) days of its execution by a majority of the Board.

3 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.

A handwritten signature in cursive script, reading "Dana Eischen", written over a horizontal line.

Dana Edward Eischen, Chairman

A handwritten signature in cursive script, reading "Stewart A. Hurlbut", written over a horizontal line.
Union Member
9/9/2005A handwritten signature in cursive script, reading "Howard H. Buchanan", written over a horizontal line.
Company Member