

PUBLIC LAW BOARD NO. 6493

PARTIES TO THE DISPUTE:

DELAWARE & HUDSON RAILWAY COMPANY, INC.

- and -

BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYEES

STATEMENT OF CLAIM:

BMWE now files this appeal, pursuant to Rule 25 of the most current BMWE/D&H agreement.

Appeal of BMWE of Discipline of 25 Demerits Assessed Against J. A. Radzikowski, Employee No. 684967, for "Failure to comply with NORAC Rules(s) D, S, and 998, effective January 17, 2000, and Rules 1.1, 1.11 (P. 1) from the D & H Safety Code and Policy (DHC-1 000) effective July 1992, account the track work you performed (stock rail and switch point did not match) in Buffalo Yard (Market Lead) resulted in a derailment on November 6, 2002 at 1220 Hours with an NS Local."

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: Track Foreman J. A. Radzikowski ("Claimant"), is an employee of the Delaware & Hudson Railway Company, Inc. ("Carrier"), subject to the terms of the Collective Bargaining Agreement between Carrier and the Brotherhood of Maintenance of Way Employees ("Organization"). Following the derailment of two cars on the Market Lead on November 6, 2002, it was determined that the cause was improper repair of damage to the switch following another

derailment at or near that same location in late October, 2002. After it was determined that the repairs in question had been performed by Claimant and another Track Department employee under his direction and supervision, Foreman Radzikowski was served with the charges described in the Statement of Claim, *supra*.

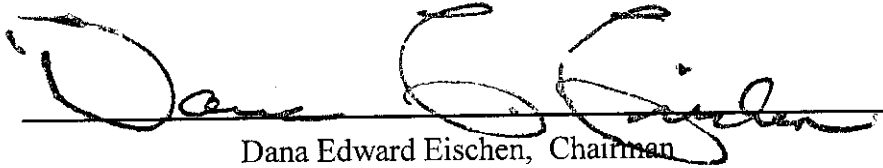
Based on the transcribed record and exhibits from an investigative hearing at which Claimant appeared with BMW representation, Carrier found him culpable as charged and assessed discipline of 25 demerits. The Organization perfected a timely appeal which is now before this Board for determination in arbitration.

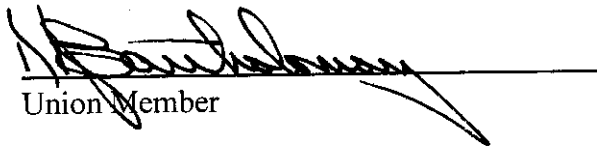
The Organization at the outset asserts procedural violations in the Notice of Charges and conduct of the hearing. However, Carrier correctly points out that these belated allegations were expressly waived by Claimant and his Organization Representative at the conclusion of the hearing. As for the merits, Carrier demonstrated by a preponderance of the record evidence that the Claimant was the Foreman in charge with responsibility to insure the repairs were properly made. Rather than wait for the proper track material, he made the decision to make the material at hand work by grinding it to fit. That is an acceptable practice if done properly but Claimant put the switch back in service without properly grinding the stock rail to fit; without applying the number two bolt in the switch; and without tamping the switch head blocks. All of these defects in the repair performed/supervised by Claimant caused the switch point to not properly fit with the stock rail and resulted in the derailment on November 6, 2002. We cannot find that Carrier erred in holding Claimant responsible for the cited Rule violations nor is the penalty imposed for his proven misconduct so excessive, unreasonable or discriminatory as to warrant arbitral intervention.


AWARD NO. 11
NMB CASE NO. 11
UNION CASE NO. 11
COMPANY CASE NO. 8-00355

AWARD

Claim denied.


Dana Edward Eischen, Chairman


Union Member


Howard H. Buchanan
Company Member