

**PUBLIC LAW BOARD – NO. 6461**

**Case No. 14**

**Award No. 14**

**PARTIES**

Brotherhood of Maintenance of Way Employees

**to**

-and-

**DISPUTE:**

Grand Trunk Western Railway

**STATEMENT OF CLAIM:**

Appeal of the discipline of a 6 month suspension of Foreman's classification, which was imposed on James Burkhardt, effective July 18, 2003.

**FINDINGS:** The issue herein came about as a result of the claimant being charged with the following offense:

"your alleged responsibility, if any, when:

1. On June 18, 2003 at approximately 1700 hours at Mileage 25.19 at Erb Lumber Switch on the Mt. Clemens Subdivision you drove down some high spikes at the point of derailment of Train 384. This action may be in violation of Canadian National/Illinois Central Railroad U.S. Operating Rules, Rule I, Paragraphs 1 and 2, effective June 2<sup>nd</sup>, 2002.
2. Also, for your alleged failure to properly repair and/or report the following defect to said switch:

The switch stand was out of adjustment.

This defect caused the derailment of Train 384 on June 18<sup>th</sup>, 2003."

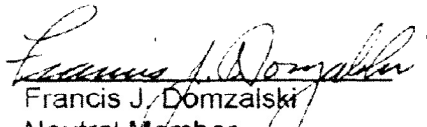
Subsequent to a formal investigation held on July 2, 2003, the Carrier found the claimant not Guilty of Charge #1, however they determined that he was guilty of Charge #2 and was assessed the above stated discipline.


After a through review of the hearing transcript, I find that aside from speculation, surmise and conjecture, the Carrier failed to produce any conclusive evidence to prove the claimant was derelict in his duties and responsibilities. The record shows that 2 days prior to the derailment, the claimant threw the involved switch for a train and found nothing wrong, and during that period of time, approximately 15 trains traversed the switch without incident. The record also

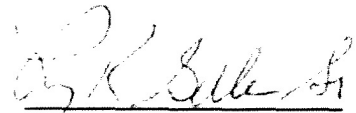
shows that only one car of a 129-car train derailed at the switch, and that subsequent investigation showed the wheel on the car in question was suspect of being condemnable.

Based on the record presented, I find the Carrier failed to meet its burden of proof in this case. Therefore, the claim is sustained. The Carrier is directed to make the claimant whole for any loss of earnings. Also, the claimant will be permitted to exercise his Foreman's seniority.

**AWARD:** The claim is sustained.

  
Francis J. Domzalski  
Neutral Member

  
Marilyn J. Kovacs  
Carrier Member

  
Perry K. Geller, Sr.  
Organization Member

Dated: 12-22-03