

PUBLIC LAW BOARD NO. 6493

PARTIES TO THE DISPUTE:

DELAWARE & HUDSON RAILWAY COMPANY, INC.

- and -

BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYEES

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier failed and refused to authorize the payment for the five hundred dollars (\$500.00) annual Work Equipment Repairmen (WER) tool allowance for the 2001 calendar year (Carrier's File 8-00186).

2. As a consequence of the violation referred to in Part 1 above, ' we once again request that each WER be allowed a \$500.00 tool allowance for the year 2001 and if that allowance is not furnished within 60 days we expect D&H to begin supplying all tools required to perform work on the D&H work equipment. Please advise when the payment will be made or, in the alternative, the procedures the WER's should follow to obtain the necessary tools from D&H.

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:

Work Equipment Repairmen ("W.E.R.") are among the class or craft of employees covered by the Collective Bargaining Agreement (CBA) between the Delaware and Hudson Railway Company, Inc. ("D&H" or "Carrier") and the Brotherhood of Maintenance of Way Employees

("Organization"). This claim was filed on March 28, 2001, during the term of the CBA dated December 21, 1999, as amended. The claim asserts a violation of the terms of a Letter Agreement dated April 2, 1992, which read in pertinent part as follows (Emphasis added):

Over the last few months we have discussed the problem of compensating the W.E.R.'s appropriately for tools that they have previously purchased from their own pockets to perform their duties for the Delaware and Hudson Railway. We also debated the fact that the Delaware and Hudson has subsidized many of the tools that they have in their possession as well.

The problem that both of us recognized, is that there has to be a procedure for which each mechanic can update his toolbox with tools that may become wither obsolete or have simply worn out.

In light of this problem, the following provisions will apply to all Work Equipment Repairman for 1992, 1993 and 1994:

1) Each active Work Equipment Repairman will be surveyed to have their election of Option #1 or Option #2. After receiving the notice of election, immediate step5 to institute policy will be taken.

Option #1 - A \$500.00 personal expense item will be authorized annually for mechanics electing to supply their own repair tools. They will be responsible for keeping a current supply of the tools required for normal maintenance of work equipment. The D&H will purchase any large or specialized tools above the normal requirements for these mechanics as required.

Option #2 - The D&H will supply all tools required to perform work an D&H work equipment.

2) D&H designated representative and BMW designated representative to jointly prepare a tool list of minimum requirements for Option #1 election.

3) This policy agreement will become effective the date of signing.

Notwithstanding the emphasized language in the third paragraph of the April 1992 Letter Agreement, *supra*, Carrier continued to honor its terms during calendar years 1995, 1996, 1997, 1998 and 1999. The present claim was filed because Carrier did not authorize the payment of the \$500 tool allowance for calendar year 2000. In denying the claim, Carrier cited the time-specific language of the April 2, 1992 Letter Agreement and asserted that payments of the tool allowance between 1995 and 1999 were in error. In addition, Carrier pointed out that the December 31, 1999 CBA made no reference to the tool allowance and cited the following "zipper clause" language from that Agreement:

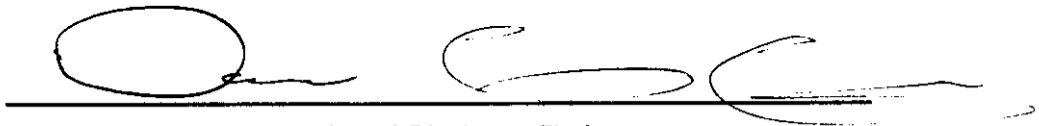
Rule 56.1 Whole Agreement Provision

This Collective Agreement supersedes in their entirety all prior collective agreements, memoranda of agreement, letters of understanding, Company letters or local agreements or understandings and constitutes the whole agreement between the parties.

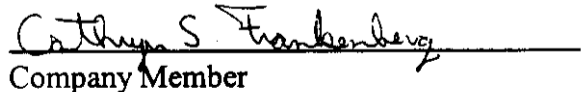
This claim arose in the context of on-going negotiations over Section 6 notices which the Parties had exchanged for amending the December 31, 1999 CBA. Among other proposals served by the Organization was a demand to increase the WER Tool Allowance from \$500 to \$750. During the discussions of the Section 6 Notices, Carrier not only declined to increase the W.E.R. Tool Allowance, but advised the Organization that it considered the April 2, 1992 Letter Agreement to have expired of its own terms after 1994. Against this background, any ambiguity concerning the mutual intent of the Parties is resolved by the undisputed fact that the Memorandum of Agreement they signed to settle the Section 6 Notices contains no mention of the WER Tool Allowance. In the circumstances, the claim presented in this case must be denied for lack of support in contract language or practice.

AWARD

Claim denied.



Dana Edward Eischen, Chairman


Union Member
Company Member