

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1122

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES  
and  
NORTHEAST ILLINOIS REGIONAL COMMUTER RAILROAD CORPORATION  
(Metra)

NMB Case No. 11

This dispute involves Mr. John L. Johnston, employed by Metra as B&B Foreman/Driver.

On October 16, 2001, Mr. Johnston was hand delivered a letter addressed to him instructing him to attend a formal investigation on October 17, 2001, for the purpose of developing facts, determine the cause, and assess responsibility, if any, in connection with the traffic accident on October 16, 2001, at approximately 8:00 a.m. when, while acting as B&B Foreman/Driver, the Company vehicle he was operating allegedly struck another vehicle at the intersection of 127<sup>th</sup> Street at Wallace Street (Vermont Street).

The charge was possible violation of Metra Safety Rule Nos.: 107.5, Nos. 1 & 2; and Rule No. 107.6, No. 1.

The letter of October 16, 2001, is attached to this Award.

The investigation was postponed until October 24, 2001, and was held on that date.

Following the investigation, Mr. Johnston received a Notice of Discipline letter dated November 12, 2001, assessing a discipline of Five Work Days Actual Suspension for failing to properly perform duties as B&B Foreman/Driver on

October 16, 2001, at approximately 8:00 a.m., when the Company vehicle being operated struck another vehicle at the intersection of 127<sup>th</sup> Street at Wallace Street (Vermont Street).

The Notice of Discipline letter of November 12, 2001, is attached to this Award.

The transcript of the investigation held on October 24, 2001, provides the basis for this Board's adjudication of this dispute.

This dispute is before this Special Board of Adjustment established by agreement between the Brotherhood of Maintenance of Way Employees and the Northeast Illinois Regional Commuter Railroad Corporation (Metra) dated November 12, 1999. SBA No. 1122.

#### FINDINGS:

This dispute centers on a traffic accident involving a private passenger automobile and a Metra Company vehicle which Mr. Johnston was driving on October 16, 2001.

There is no dispute as to the facts that occurred in this incident. Mr. Johnston did everything he was supposed to do in reporting the accident and following the instructions of the police concerning the accident.

The question before us in this Case is was Mr. Johnston at fault for what occurred and did he exercise caution when he allowed the Company vehicle he was driving to strike the vehicle ahead.

It is apparent from the testimony in the record that slippery road conditions were present.

It is apparent from the testimony in the record that there may have been actions on the part of two (2) other vehicles that were factors in the accident that occurred. The record shows that there were two (2) passenger automobiles ahead of Mr. Johnston's Company vehicle. All were stopped and awaiting a left turn signal to proceed.

When the left turn signal displayed go, the driver of vehicle #1 started to move and momentarily changed direction and proceeded straight ahead. At this point, vehicle #2 stopped and vehicle #3, the Company vehicle Mr. Johnston was driving, slid into vehicle #2.

In our review of the transcript testimony, we view the testimony of Lt. S. Castro, Metra Police officer who investigated the accident and scene after it was reported to him by Mr. Johnston, as critical to what took place.

Lt. Castro testified that had he been present at the scene and based on the information that was provided to him, he would have issued two (2) tickets; one to the driver of car #2 for not having a valid driver's license, expired plates and no proof of insurance; and he would have issued a ticket to Mr. Johnston for following too closely for conditions.

It is difficult to ignore what transpired in this Case, and while there may have been extenuating circumstances involved, we cannot ignore the fact that Mr. Johnston's Company vehicle did strike the vehicle #2 ahead of him.

While Mr. Johnston has a good driving record and testimony by his supervisor states that he was a good employee and has had no problems with him, it is apparent that in this instant case, Mr. Johnston must be accountable for what happened as the Company vehicle he was driving struck the vehicle ahead of him.

Based on the foregoing, this Board can find no basis for overturning the discipline of Five Work Days Actual Suspension assessed Mr. Johnston in this Case.

AWARD:

Claim denied.

*Charles J. Chamberlain*

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Charles J. Chamberlain  
Neutral Member

Date February 5, 2002



Metra KYD Facility  
12301 So. Indiana Avenue  
Chicago, IL 60628

October 16, 2001

**HAND DELIVERED**

Mr. John L. Johnston, II                      Emp. #7559  
2937 S. Union  
Chicago, IL 60616

Dear Mr. Johnston:

You are hereby instructed to attend a formal investigation which will be held in the KYD Conference Room, 12301 So. Indiana Avenue, Chicago, IL 60628, at 10:00 a.m., on Wednesday, October 17, 2001.

The purpose of this investigation is to develop the facts, determine the cause, and assess responsibility, if any, in connection with the traffic accident on October 16, 2001, at approximately 8:00 a.m., when while acting as B&B Foreman/Driver, the Company vehicle you were operating, 90782, allegedly struck another vehicle at the intersection of 127th Street at Wallace Street (Vermont Street).

In connection therewith, you are charged with possible violation of Metra Safety Rule Nos.: 107.5, Nos. 1 & 2; and Rule No. 107.6, No. 1.

You may be represented at the subject investigation as provided for in your labor agreement, and you will be afforded the opportunity to present evidence and testimony in your behalf and to cross examine any witnesses testifying.

Your past personal record may be reviewed at this investigation (copy attached).

This letter is being hand delivered to you, for which you will acknowledge receipt by signing the duplicate copy attached.

--LABOR REL--

Sincerely,

A handwritten signature in dark ink, appearing to read "W. T. Archer", is written over the typed name.

W. T. Archer, Director  
Metra Electric Engineering

cc: V. L. Stoner  
W. K. Tupper  
D. S. Mogan  
G. Washington  
J. L. Barton

H. Thomas  
A. Scott, L.C. BMW  
M. Wimmer, G.C. BMW  
C. Cary

J. A. Bailey - Please arrange to attend as a Company witness.  
L. Ellis        -        "        "        "        "        "        "

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**NORTHEAST ILLINOIS REGIONAL COMMUTER RAILROAD CORP.**

**NOTICE OF DISCIPLINE**

W. K. Tupper, Chief Engineering Ofc.

SUPERVISOR ASSESSING DISCIPLINE

547 W. Jackson Blvd., 4th Floor

WORK LOCATION

November 12, 2001

DATE

John L. Johnston II Emp. #7559

EMPLOYEE NAME (TYPE OR PRINT)

☒ Formal Investigation ☐ Waiver of Formal Investigation (check proper box) has indicated your responsibility for violation of NIRCRC Rules in the following incident (describe):

Failure to properly perform duties as B&B Foreman/Driver on October 16, 2001, at approximately 8:00 a.m., when the Company vehicle being operated struck another vehicle at the intersection of 127th Street at Wallace Street (Vermont Street).

In violation of Metra Safety Rule Nos.: 107.5, Nos. 1 & 2; and Rule No. 107.6, No.

Therefore, you are assessed the following discipline which will also be entered into your personal employment record (check appropriate box or boxes).

**FIVE WORK DAYS ACTUAL SUSPENSION**

☐ 1. Formal reprimand (letter attached).

☐ If you waive investigation, the reprimand letter will be effective for one year.

☐ 2. Three work days deferred suspension [this suspension will remain deferred for 2 years and will be served as actual suspension if further discipline is assessed during that period.]

☐ If you waive investigation, one work day of deferred suspension is assessed instead of three work days.

--LABOR REL--

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~~XXX~~ 3. Five work days actual suspension.

- ☐ If you waive investigation, three work days of suspension will be served instead of five work days, plus the deferred days from Step 2.

~~XXX~~ Your record indicates deferred suspension of 1 work days which was assessed on 12-1-99 and must be served in conjunction with discipline noted above.

☐ 4. Ten work days actual suspension.

- ☐ If you waive investigation, seven work days of suspension will be served instead of ten work days.

~~XXX~~ 5. Period of Suspension (if applicable).

Suspension from your job assignment will begin on 11/13/01 and will end 11/18/01. You must return to work on 11/19/01. Failure to return on that date will be regarded as an unauthorized absence.

.....

- ☐ 6. Dismissal. Your employment with this corporation is terminated effective \_\_\_\_\_ (date). You must immediately return all company property.

3:10  
Time

11/12/01  
Date

*W. K. Tupper* 2029  
Signature & title of Supvr assessing discipline

*John L Johnston II*  
Employee

\_\_\_\_\_  
Union Witness

cc: Metra Personnel