

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1122

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

NMB Case No. 12

This dispute involves Mr. Froylan S. Guzman employed by Metra as a B&B Foreman.

On September 27, 2001, Mr. Guzman was hand delivered a letter addressed to him and Mr. Jetun Jefferson instructing them to attend a formal investigation on Friday, October 5, 2001, for the purpose of developing facts, determine the cause and assess responsibility, if any, in connection with their alleged failure to safely perform their duties on September 26, 2001, at approximately 11:40 a.m. when the Company vehicle Mr. Guzman was driving allegedly struck another Company vehicle which was parked in the KYD Facility parking lot. The charge was possible violation of Metra Safety Rule Nos. 107.5 (1, 2 & 11) and Rule 107.10.

The letter of September 27, 2001, is attached to this Award.

The investigation was postponed until Wednesday, October 17, 2001, at the request of the Organization's Local Chairmen Ray Hooker and Al Scott.

The investigation was held on October 17, 2001.

Following the investigation, Mr. Guzman received a Notice of Discipline letter dated November 5, 2001, assessing discipline of Three work days deferred suspension for failure to properly perform his duties at approximately 11:40 a.m. on September 26, 2001, when the Company vehicle being operated by Mr. Guzman struck another Company vehicle which was parked in the KYD Facility parking lot.

The Notice of Discipline letter dated November 5, 2001, is attached to this Award.

The transcript of the investigation held on October 17, 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:

The incident in this case involved a Company truck driven by Mr. Froylan Guzman, B&B Foreman.

Mr. Guzman's Company truck was parked in the KYD Facility parking lot. A Company passenger vehicle was parked to the right of Mr.

Guzman's truck. Mr. Guzman requested Mr. Jetun Jefferson, Asst. B&B Mechanic, to assist him in guiding him out of the parking space.

In the process of backing out of the space, the Company truck driven by Mr. Guzman struck the left rear side of the Company vehicle parked on the right side of Mr. Guzman's truck.

The testimony in the transcript record is lengthy, confusing and, in some instances, contradictory.

It is apparent from the record that Mr. Guzman for a moment may have lost sight of Mr. Jefferson's hand signals and continued to back up and turn his truck to the left too soon before he was clear of the passenger vehicle on his right.

While both Mr. Guzman and Mr. Jefferson were initially charged in this dispute, Mr. Guzman, the driver of the Company truck, was the one disciplined for the accident and violation of Carrier rules.

In our review of the transcript record, we cannot ignore the fact that an accident did occur and Mr. Guzman was the driver of the truck that struck the parked Company vehicle.

Mr. Guzman must be held responsible for what occurred. There is no evidence in the record to show that the actions of Mr. Jefferson in any way contributed to the cause of the accident. This is confirmed by the fact that

while the Carrier initially charged Mr. Jefferson along with Mr. Guzman, the Carrier did not assess any discipline against him.

Accordingly, it is the decision of this Board that there is no basis for overturning the discipline of Three work days deferred suspension assessed Mr. Guzman in this dispute.

AWARD:

Claim denied.

Charles J. Chamberlain

Charles J. Chamberlain
Neutral Member

Date January 18, 2002



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

September 27, 2001

HAND DELIVERY

Mr. Froylan S. Guzman, (I.D. 4671) Mr. Jetun Jefferson (I.D. 6666)
7437 Pierce Place 11647 South Morgan
Merrillville, IN 46410 Chicago, IL 60643

Dear Sirs:

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 8:00 a.m., on Friday, October 5, 2001.

The purpose of this investigation is to develop the facts, determine the cause, and assess responsibility, if any, in connection with your alleged failure to safely perform your duties on September 26, 2001, at approximately 11:40 a.m., when while acting as B&B Foreman/Driver and Asst. Mechanic/Flagman, the Company vehicle you were operating (90625), allegedly struck another Company vehicle (90743), which was parked in the KYD Facility parking lot.

In connection therewith, you are charged with possible violation of Metra Safety Rule Nos.: 107.5, Nos. 1, 2, and 11; and Rule No. 107.10.

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.

-LARCH REL--

Sincerely,

W. T. Archer, Director
Metra Electric Engineering

cc: V. L. Stoner Ii. Thomas
W. K. Tupper J. A. Bailey
D. S. Mogan R. Hooker, L.C. BMW
G. Washington H. Granier, G.C. BMW
J. L. Barton A. Scott, L.C. BMW
c. Cary M. Wimmer, G.C. BMW
R. E. Farnesi Please arrange to
attend as Company witness.

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NORTHEAST ILLINOIS REGIONAL COMMUTER RAILROAD CORP.

NOTICE OF DISCIPLINE

W. K. Tupper, Dept. Head

SUPERVISOR ASSESSING DISCIPLINE

547 W. Jackson Blvd. 4th Floor

WORKLOCATION

November 5, 2001

DATE

E. Guzman, Emp. 4671
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 on September 26, 2001, at approximately 11:40 a.m., when the Company vehicle being operated struck another Company **vehicle which was** parked in the **KYD** Facility parking lot. In violation of Safety Rule Nos. 107.5 (1,2 & 11) and Rule No. 107.10.

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

☐ **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.

☐ 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.
- ☐ Your record indicates deferred suspension of _____ work **days** which was assessed on _____ 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.

☐ 5. Period of Suspension (if applicable).

Suspension from your job assignment will begin on _____ and will end _____ You must return to work on _____. 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.

1:20
Time

11/5/01
Date

WR Tupper wa
Signature & title of Supvr assessing discipline

Frederic yusman
Employee

Union Witness

cc: Metra Personnel