

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1122

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

NMB Case No. 13

This case involves Mr. Mark A. Vazquez who is employed by Metra as an Assistant B&B Foreman.

Mr. Vazquez was sent a certified letter dated September 28, 2001, instructing him to attend a formal investigation on Thursday, October 4, 2001, at 11:00 a.m. for the purpose of developing the facts, determine the cause and assess responsibility, if any, in connection with his alleged carelessness while operating a Company vehicle on September 24, 2001, which allegedly resulted in damage to the vehicle he was driving and his alleged failure to report the incident.

Mr. Vazquez was charged with violation of Metra Employee Conduct Rules: Rule F, Rule L, Rule N – Item 1, and GCOR Rules: Rule 1.1.2 and Rule 1.1.3.

The letter of September 28, 2001, to Mr. Vazquez is attached to this Award.

The investigation scheduled for September 28, 2001, was postponed until October 22, 2001.

The investigation was held on October 22, 2001, and completed on that date. The Hearing Officer was Mr. Lawrence C. Powell, General Bridge & Building Supervisor – Capital.

Following the investigation, Mr. Vazquez received a hand-delivered letter dated November 9, 2001, from Mr. Powell advising that he had been assessed discipline of Dismissal for his responsibility in the incident occurring on September 24, 2001, in violation of Metra Employee Conduct Rules: Rule F, Rule L, Rule N – Item 1, and GCOR Rules: Rule 1.1.2 and Rule 1.1.3.

The letter of November 9, 2001, to Mr. Vazquez is attached to this Award.

The transcript of the investigation held on October 22, 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 occurring on September 24, 2001, which gave rise to this dispute involved a Company truck driven by Mr. Mark Vezquez and another Company truck while working on a road crossing project at the Nashville Street Station. The extent of the damage was a scratch on the side of the welding truck. The incident occurred at around 3:00 p.m. in the afternoon.

The testimony of Foreman John Kostuch in the transcript clearly outlines what took place at the time and date of the incident.

Foreman Kostuch testified that because of the minor nature of the incident, he told Mark Vazquez, “we’ll report it in the morning to the police.”

Testimony by Mr. Vazquez, in the record and confirmed by Foreman Kostuch, reveals that Mr. Vazquez called the Metra police 2800 number and reported the incident to a female police officer on September 25, 2001. The call was made between the hours of 7:00 a.m. and 8:00 a.m.

Mr. John J. Scalzo, Police Lieutenant for the Metra police, testified that there was no evidence on the tapes of the Police Department for September 24 and 25, 2001, which would indicate an accident report was made; however, Lt. Scalzo testified that the content of the tapes could not be reviewed because of other confidential conversations on the tapes.

After a thorough review of the transcript testimony in this dispute and all of the facts contained in the record surrounding the incident that took place, we can find no basis or support for the charges against Mr. Vazquez. The incident that occurred was of such a minor nature that the Foreman in charge decided that because of time restraints on the project they were involved in completing on September 24, 2001, the incident could be reported the next day which was done according to testimony of both Mr. Vazquez and Foreman Kostuch. There is nothing in the record that reveals carelessness on the part of Mr. Vazquez in operating the vehicle he was driving. Mr. Vazquez's immediate Supervisor Mr. John Kostuch was present and aware of everything that transpired.

We cannot find any fault with the decisions that were made and the actions taken by Mr. Vazquez.

There were no violations of Carrier Rules as charged in the Notice of Investigation letter and the Notice of Discipline letter.

Accordingly, it is the decision of this Board that the Notice of Discipline letter of November 9, 2001, dismissing Mr. Vazquez from service be rescinded and removed from his record. Mr. Vazquez to be returned to service with seniority and all other rights unimpaired and compensated for any lost time as a result of this incident. Because of the

decision made by this Board in NMB Case 14 involving Mr. Vazquez, the period for lost compensation due Mr. Vazquez would be from November 9, 2001, to November 14, 2001.

AWARD:

Claim sustained in accordance with the above findings.



Charles J. Chamberlain  
Neutral Member

Date January 18, 2002

# NORTHEAST ILLINOIS RAILROAD CORPORATION

Milwaukee District Engineering  
2931 West Chicago Avenue  
Chicago, Illinois 60622

## NOTICE OF INVESTIGATION

September 28, 2001

FIRST CLASS MAIL & CERTIFIED MAIL

Mr. M. Vazquez, Asst. B&B Foreman, #5370

You are hereby instructed to attend a formal investigation which will be held in the office of the Director of Engineering, Milwaukee District, 2931 W. Chicago Ave, Chicago, Illinois 60622, Thursday, October 4, 2001 at 11:00 A.M.

The purpose for this investigation is to develop the facts, determine the cause and assess responsibility. **if any**, in connection with your alleged carelessness while operating a company vehicle on September 24, 2001, which allegedly resulted in damage to the vehicle you were driving and with your alleged failure to report the incident.

In connection, therewith, you are charged with the alleged violation of the following Metra Employee Conduct Rules: **Rule F, Rule L, Rule N-Item 1** , and GCOR Rules: **Rule 1.1.2 and Rule 1.1.3.**

**Rule F-** Employees must report immediately...the details of accidents.

**Rule L -** Constant presence of mind to insure safety to themselves and others is the primary duty of all employees and they must exercise care to avoid injury to themselves or others.

**Rule N - Item 1 -** Employees must not be careless of the safety of themselves and others.

Rule 1.1.2 -Alert and Attentive

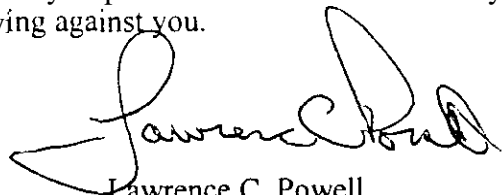
**Rule 1.1.3-Report** by the first means of communication any accidents.

Your personal work record will be reviewed at this investigation. (Copy attached)

You may be represented at this investigation as provided for in your labor agreement. Your representative will be given the opportunity to present evidence and testimony in your behalf and to cross-examine any witnesses testifying against you.

G/C BMW-Granier  
L/C BMW-Hozian  
V.L. stoner  
W. K. Tupper  
R. C Schuster  
G. Washington  
H. Thomas  
L. Barton  
C. Cary

E. Howell---Please arrange to appear as a company witness  
J. Kostuch---Please arrange to appear as a company witness  
J. Scalzo-----Please arrange to appear as a company witness



Lawrence C. Powell

General Bridge & Building Supervisor-Capital

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## NORTHEAST ILLINOIS RAILROAD CORPORATION

**Milwaukee District Engineering**  
**2931 West Chicago Avenue**  
**Chicago, Illinois, 60622**

### Results of Investigation

Hand Delivered

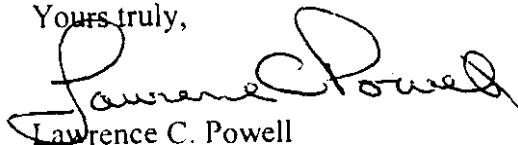
Mr. M. Vazquez, Asst.B&B Foreman, #5370

November 9, 2001

A review of the transcripts of **the investigation**, scheduled for October 4, 2001 and postponed and held on October 22, 2001, has resulted in the following discipline being issued: **Dismissal**.

The assessment of the above discipline will be placed on your record as outlined in the progressive discipline policy.

Yours truly,



Lawrence C. Powell  
General Bridge & Building Supervisor-Capital  
(312) 322-4118

JAP/lcp

cc: G/C-BMWE-Granier  
L/C-BMWE-Petty  
V. L. Stoner  
W. K. Tupper  
R. C. Schuster  
G. Washington  
H. Thomas  
J. Barton  
C. Cary

--LAWRENCE--

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NOTICE OF DISCIPLINE

M. Vazquez, #5370

Franklin Park

Lawrence C. Powell

Employee Name

Work Location

Supervisor assessing discipline

DATE: November 9, 2001

**X FORMAL INVESTIGATION**

**X WAIVER OF INVESTIGATION**

**SCHEDULED FOR OCTOBER 4, 2001**

**POSTPONED AND HELD ON**

**OCTOBER 22, 2001**

Has indicated your responsibility in connection with the violation of Metra Employee Conduct Rules: **Rule F, Rule L, Rule N, Item I, and GCOR Rules 1.1.2 and 1.1.3**, when you failed to exercise care driving a company vehicle which resulted in damage to the vehicle and failed to report the incident on September 24, 2001. Therefore, you are hereby assessed the following discipline which will also be entered on your personal record:

<i>Formal</i>	<i>Waiver</i>
1. Formal Letter of Reprimand (effective for two years)	1. Formal Letter of Reprimand (effective for one year)
2. Three (3) work days deferred suspension	2. One (1) work day deferred suspension
3. Five (5) work days suspension plus the deferred days from step two (2)	3. Three (3) work days suspension plus the deferred days from step two (2)
<p>Your record indicates a deferred suspension of ____ day(s) was assessed on _____ and must be served in conjunction with discipline outlined above.</p> <p>As a result, suspension will begin _____ and end _____. You must return to work on _____. Failure to return on that date will be treated as an unauthorized absence.</p>	
4. Ten (10) work days suspension	4. Seven (7) work days suspension
<p>As a result, suspension will begin _____ and end _____. You must return to work on _____. Failure to return on that date will be treated as an unauthorized absence.</p>	
X 5. Dismissal	5. Dismissal
<p>Your employment with this Corporation is terminated effective <u>November 9, 2001</u>. You must return all company property.</p>	

Employee

Union Witness

Supervisor assessing discipline

cc: Metra Personnel