

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1122

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

NMB Case No. 14

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 October 3, 2001, instructing him to attend a formal investigation on Tuesday, October 9, 2001, at 9:00 a.m. for the purpose of developing facts, determine the cause and assess responsibility, if any, in connection with his alleged failure to report an incidental injury on Saturday, September 29, 2001.

Mr. Vazquez was charged with alleged violation of Metra Employee Conduct Rule F.

The letter of October 3, 2001, to Mr. Vazquez is attached to this Award.

The investigation was postponed until October 22, 2001, and commenced on that date.

At the investigation on October 22, 2001, the Organization Representative Mr. Tim Petty requested that the investigation be recessed

until a later date. The request was granted and the investigation was suspended until November 6, 2001, and continued to a conclusion on that date.

Following the investigation, Mr. Vazquez received a certified letter dated November 14, 2001, from Mr. John A. Pebler, Director Milwaukee District Engineering, advising him that as a result of the investigation held on October 22, 2001, and continued on November 6, 2001, he was dismissed from service.

The letter of November 14, 2001, is attached to this Award.

The transcript of the investigation held on October 22, 2001, and continued on November 6, 2001, to a conclusion 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 case involves Mr. Mark A. Vezquez who is employed by Metra as an Assistant B&B Foreman.

Mr. Vazquez was charged with failing to report an injury which allegedly occurred on Saturday, September 29, 2001, while he was working with his Foreman Mr. John Kostuch and a crew of other employees at a work site near the Elgin Station.

The work being performed consisted of lifting timbers and shoveling ballast.

Mr. Vazquez testified that towards the end of the day on Saturday, September 29, 2001, on the way back from the work site he was experiencing lower back pain.

Mr. Vazquez testified that he did not report his alleged injury to his Foreman or any other of his supervisors on Saturday or Sunday.

Mr. Vazquez called in on Monday morning, October 1, 2001, and requested the day off so he could take his wife to the doctor.

Mr. Vazquez did not report the alleged injury until Monday afternoon, October 1, 2001, when he contacted Mr. Eugene Howell, Assistant Supervisor, and reported the alleged injury.

This dispute centers on the failure of Mr. Vazquez to report an alleged injury on September 29, 2001, the date it allegedly occurred. Mr. Vazquez could have contacted Foreman Kostuch who he was working with on that

date. Mr. Vazquez could have contacted other Carrier officials on Saturday night or Sunday, but he did not.

Mr. Vazquez's failing to do so clearly violated Rule F as charged by the Carrier.

Having determined that the Claimant was responsible in this matter, the Board now turns to the measure of discipline. Based on the Claimant's previous record, it was consistent with the Carrier's discipline policy to dismiss him for this infraction. Accordingly, the discipline will remain on the Claimant's record. The Board believes, however, that the Claimant should be afforded one final opportunity to demonstrate that he understands his obligation to comply with the Carrier's rules. Therefore, the Board directs that the Claimant be returned to service in his previous position, with his seniority and all other rights unimpaired, but without any compensation for the time lost as a result of his dismissal.

AWARD:

Claim partially sustained in accordance with the above findings.



Charles J. Chamberlain
Neutral Member

Date January 18, 2002

NORTHEAST ILLINOIS RAILROAD CORPOIUTION

Milwaukee District Engineering
2931 West Chicago Avenue
Chicago, Illinois 60622

NOTICE OF INVESTIGATION

October 3, 2001

U. S. 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, Tuesday, October 9, 2001 at 9:00 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 failure to report an incidental injury on Saturday, September 29, 2001.

In connection, therewith, you are charged with the alleged violation of the following Metra Employee Conduct Rule:

Rule F- Employees must report immediately to the proper officer by quickest available means of communication, the details of accidents....Required reports on proper form must follow promptly.

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-Petty

V. L. Stoner

W. K. Tupper

R. C. Schuster

G. Washington

H. Thomas

J. Barton

C. Cary

L. C. Powell---Please arrange to appear as a company witness

E. Howell--- Please **arrange to appear as a company witness**

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



John A. Pebler, Director
Milwaukee District Engineering

cc: MCL--

cc: MCL--

NORTHEAST ILLINOIS RAILROAD CORPORATION

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

Results of InvestigationCertified Mail

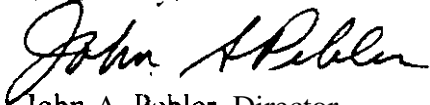
Mr. M. Vazquez, Asst.B&B Foreman, #5370

November 14, 2001

A review of the transcripts of **the investigation**, held on October 22, 2001 and continued on November 6, 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. You must return all company property (i.e. keys, ID. etc.).

Yours truly,



John A. Pebler, Director
Milwaukee District Engineering
(312) 322-4103

JAP/tmc

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

-LABOR REL--

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NORTHEAST ILLINOIS REGIONAL COMMUTER RAILROAD CORPORATION

NOTICE OF DISCIPLINE

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M. Vazquez, #5370

Franklin Park

John A. Pebler

Employee Name

Work Location

Supervisor assessing discipline

DATE: November 14, 2001

X FORMAL INVESTIGATION
HELD ON OCTOBER 22, 2001 AND
CONTINUED ON NOVEMBER 6, 2001


X WAIVER OF INVESTIGATION

Has indicated your responsibility in connection with the violation of Metra Employee Conduct Rules: **Rule F.** when you failed to report an **incidental** injury report on Saturday, September 29, 2001. Therefore, you are hereby assessed the following discipline which will also be entered on your personal record:

<i><u>Formal</u></i>	<i><u>Waiver</u></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)
Your record indicates a deferred suspension of ____ day(s) was assessed on _____ and must be served in conjunction with discipline outlined above. 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.	
4. Ten (10) work days suspension	4. Seven (7) work days suspension
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.	
X 5. Dismissal	5. Dismissal
Your employment with this Corporation is terminated effective <u>November 14, 2001</u> . You must return all company property.	

Employee

Union Witness



Supervisor assessing discipline

cc: Metra Personnel