

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1122

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

NMB Case No. 17

This dispute involves Mr. Jesus Unzueta employed by Metra as Assistant Track Foreman.

Mr. Unzueta was sent via first-class mail and certified-mail a letter dated March 13, 2002, instructing him to attend a formal investigation on Friday, March 22, 2002, for the purpose of developing the facts, determine the cause, and assess responsibility, if any, in connection with his alleged unauthorized and unpaid absences on Monday and Tuesday, March 11 and 12, 2002.

Mr. Unzueta was charged with alleged violation of Metra Employee Conduct Rule "Q", Paragraph 1 and Metra's Special Instruction #1, Pages 1 and 2.

The letter of March 13, 2002, to Mr. Unzueta calling for the investigation and the specific charge of the violation of the Carrier's Rules is attached to this Award.

The investigation of Mr. Unzueta was held as scheduled on March 22, 2002.

Following the investigation, Mr. Unzueta was sent a Notice of Discipline letter dated April 10, 2002, assessing him discipline of five (5) work days actual suspension.

The letter of April 10, 2002, is attached to this Award.

The transcript of the investigation held on March 22, 2002, 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 issue in this dispute is the unauthorized absence of Mr. Unzueta from work on his assigned position as Assistant Track Foreman on March 10 and 11, 2002.

The investigation transcript reveals that Mr. Unzueta was not present at the investigation held on March 22, 2002, but was represented by Organization Representative Mr. Alan Scott, Local Chairman.

Mr. Moses Richardson, Rock Island District Engineering Officer, was the Hearing Officer and conducted the investigation. Mr. Robert Worley, Roadmaster, was the only witness to testify for the Carrier at the investigation.

The circumstances in this dispute are unusual, to say the least, as in most all investigation proceedings, the employee accused is present to participate in the proceedings, listen to testimony of all others who may testify, and additionally, is

afforded an opportunity to present their case along with their duly designated Labor Representative.

In this dispute, Mr. Unzueta, the accused, was not present but was represented by Mr. Alan Scott, Local Chairman.

At the start of the investigation, the transcript testimony reveals that Local Chairman Scott objected to the investigation because Mr. Unzueta was not present. Mr. Richardson, the Hearing Officer, asked Mr. Scott if he desired a delay or postponement of the investigation in order to contact or locate Mr. Unzueta.

The record shows that the Hearing Officer afforded Mr. Scott that opportunity, but the record shows that Mr. Scott declined and concurred with proceeding with the investigation.

The testimony of Roadmaster, Mr. Robert Worley, clearly confirmed the fact that Mr. Unzueta last worked on March 8, 2002, but did not report for work on Monday, March 11, and Tuesday, March 12, and did not make any attempt to contact anyone before those dates to ask for permission to be off duty. In fact, the testimony in the record reveals that as of the date of the investigation, Mr. Unzueta had made no contact with the Carrier; and additionally, Mr. Scott, his Organization Representative, stated that he was unable to contact Mr. Unzueta.

Based on the record before us, it is clear that there is no basis for considering any procedural defect because of Mr. Unzueta not being present at the investigation.

The Organization acquiesced in continuing the investigation, and accordingly, our decision will be based on the merit of this Case.

Based on the record before us, Mr. Unzueta failed to report for work on March 11 and 12, 2002, and was absent without prior permission. Those are the irrefutable facts in this Case, and Mr. Unzueta was in violation of the Carrier rules as charged.

Accordingly, it is our decision that there is no basis for overturning the discipline decision of five (5) work days actual suspension plus one (1) day deferred suspension from a prior discipline case against Mr. Unzueta which was assessed on October 23, 2001.

AWARD:

Claim denied.

Charles J. Chamberlain

Charles J. Chamberlain
Neutral Member

Date June 6, 2002



NOTICE OF INVESTIGATION

March 13, 2002

US MAIL AND CERTIFIED MAIL #7000 1670 0003 4409 8779

Mr. Jesus Unzueta
14001 S. Western Avenue
Blue Island, IL 60406

Dear Mr. Unzueta:

You are hereby instructed to attend a formal investigation which will be held on Friday, March 22, 2002 at 9:00 a.m. in the Office of Director of Engineering, 2067 West 123rd Street, Blue Island, Illinois 60406.

The purpose of this investigation is to develop the facts, determine the cause and assess responsibility, if any, in connection with your alleged unauthorized and unpaid absences on Monday and Tuesday, March 11 and 12, 2002. Therefore you are hereby charged with alleged violation of Metra's Employee Conduct Rule "Q", Paragraph 1 and Metra's Special Instruction #1, Pages 1 and 2. Your work record, a copy of which is attached, will be reviewed at this investigation.

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.

Sincerely,

A handwritten signature in cursive script, appearing to read "M. Richardson", is written over the word "Sincerely,".

M. Richardson, Director
Rock Island Engineering

MR/dm

cc: V. L. Stoner
W. K. Tupper
G. Washington
H. Thomas
J. Barton
C. Cary
M. S. Wimmer, G/C
A. F. Scott, L/C
R. J. Worley - Please appear as Corporate Witness

-LABOR REL--

02 I hereby acknowledge receipt of the original of this letter.

Signed

Date

JSB

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NORTHEAST ILLINOIS COMMUTER RAILROAD CORPORATION
NOTICE OF DISCIPLINE

BOR REL--

R 02 5: 21

Name & address of supervisor assessing discipline:

W.K. Tupper
Chief Engineering Officer
547 W. Jackson Boulevard
Chicago, Illinois 60661

April 10, 2002

Mr. Jesus Unzueta
14001 S. Western
Blue Island, IL 60406

The result of the investigation of March 22, 2002, has revealed your responsibility in connection with the violation of Metra Employee Conduct Rule "Q" and Metra's Special Instruction #1, Pages 1 and 2. Therefore you are hereby assessed the following discipline which will also be entered on your personal record:

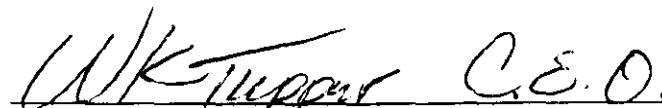
- () 1. Formal reprimand (letter of particular attached).
- () 2. Three (3) days deferred suspension (with waiver one (1) day deferred) which will remain in effect for two (2) years and must be served as actual suspension if additional discipline is assessed during those years.
- (X)3. Five (5) work days actual suspension (with waiver three (3) days plus deferred from Step 2).**
- (X)3a. Your record indicates a deferred suspension of 1 day which was assessed on 10/23/01 and must be served in conjunction with discipline outlined above.**

Suspension will begin Thursday, April 11, 2002 and end Thursday, April 18, 2002. You must return to work on Friday, April 19, 2002. Failure to return to work on that date will be treated as an unauthorized absence.

- () 4. Ten (10) work days actual suspension (with waiver seven (7) days).

Suspension will begin _____ and end _____
You must return to work on _____. Failure to
return to work on that date will be treated as an unauthorized absence.

- () 5. Dismissal.


Signature & Title of Supervisor assessing discipline