

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1122

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

NMB Case No. 19

This dispute involves Mr. Richard Sparks employed by Metra as a B&B Mechanic.

Mr. Sparks was hand delivered a letter dated April 19, 2002, instructing him to attend a formal investigation on Thursday, April 25, 2002, for the purpose of developing facts, determining the cause and assess responsibility, if any, in connection with an accident with Metra Vehicle #90810 on Friday, April 12, 2002. It was alleged that an unsecured load of pipe shifted when Mr. Sparks was driving the vehicle causing damage to the rear window.

Mr. Sparks was charged with alleged violation of Metra's Employee Conduct Rule "N", Paragraph #3, Items #2 and #3 and Safety Rule 107.2, #8 and #9.

The letter of April 19, 2002, calling for the investigation and the specific charges against Mr. Sparks is attached to this Award.

The investigation was postponed until May 1, 2002, and held on that date.

Following the investigation, Mr. Sparks received a Notice of Discipline letter dated May 17, 2002, assessing discipline of Three (3) days deferred

suspension for violation of Metra Employee Conduct Rule "N", Paragraph #3, Items #2 and #3 and Safety Rule 107.2, #8 and #9.

The transcript of the investigation held on May 1, 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:

This dispute involves an incident occurring on Friday, April 12, 2002, when the rear window on Metra Vehicle #90810 was damaged.

Mr. Sparks was the driver of the truck on the day of the incident.

The transcript testimony reveals that Mr. Sparks was working under the supervision and direction of Mr. Martin DeVito, B&B Foreman on the day of the incident.

Mr. DeVito testified that Mr. Sparks was told to drive the truck to the 51<sup>st</sup> Street Yard where there was a fence project underway.

Mr. DeVito testified that he had received a call from his Assistant Foreman, Mr. Phil Rodriquez, on the day of the incident advising Mr. DeVito that the back window of the truck was broken while they were unloading the fence poles from the truck.

Mr. DeVito testified that the truck was loaded with fence poles on the day before the incident.

Mr. DeVito testified that he personally inspected the loading of the truck on the day before the incident and the load was very secure.

At issue in this dispute is whether the damage to the rear window of the truck occurred during the trip between job sites or did the damage occur during the unloading process.

The Carrier has based their position on the accident report of Mr. Joseph Gbur, Metra Police Officer, Carrier Exhibit No. 2, wherein Mr. Sparks stated that he believed that while en route from Blue Island to 47<sup>th</sup> Street that a load of pipe shifted and struck the protective gate on the truck which in turn struck the rear window of the truck and cracked the glass.

The police report also stated that Mr. Sparks said that he was unaware of when the glass actually broke.

The property damage personal injury report prepared by Mr. Joseph Gbur, Officer of the Metra Police Department, Carrier Exhibit No. 5, stated "Was carrying pipe from Blue Island Yard to 47<sup>th</sup> St. Yard White Truck #90810. I believe that the pipe bump the gate in the back of the cab, and broke the window of the truck, once we stop at 47<sup>th</sup> St the window was broken." Both Carrier Exhibits No. 2 and No. 5 are attached to this Award.

It is quite evident from both Carrier Exhibits No. 2 and No. 5 that the accused Mr. Sparks was not positive as to whether the damage occurred while en route from job site to job site while he was driving the truck.

It seems highly unlikely that a rear window of a truck could be damaged while traveling from job site to job site without attracting the attention of the driver and passenger in the cab with the driver.

There is no evidence in the record to show that is what occurred. There are positive statements in the record to show that the damage occurred when the pipe was being unloaded. The testimony of Foreman DeVito, B&B Mechanics Larry Harper and Trenidale Evans clearly point out that Mr. Sparks was not negligent or responsible for the window damage to the truck. Based on the testimony in the record, there is no basis or support for the assessment of any discipline against Mr. Sparks.

Accordingly, it is our decision that the Notice of Discipline letter of May 17, 2002, to Mr. Sparks be rescinded and Mr. Sparks record be cleared of the charge. Additionally, Mr. Sparks should be compensated for any time lost as a result of this incident.

AWARD: Claim sustained in accordance with the above findings.



Charles J. Chamberlain  
Neutral Member

Date July 17, 2002



NOTICE OF INVESTIGATION

April 19, 2002

HAND DELIVERED

23 APR 02 3:52 PM

Mr. Richard Sparks  
15210 S. Evers  
Dolton, IL 60409

--LABOR REL--

Dear Mr. Sparks:

You are hereby instructed to attend a formal investigation which will be held on Thursday, April 25, 2002 at 10:00 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 involvement with an accident with Metra Vehicle #90810 on Friday, April 12, 2002. It is alleged that an unsecured load of pipe shifted while you were driving this vehicle causing damage to the rear window. Therefore you are hereby charged with alleged violation of Metra's Employee Conduct Rule "N", Paragraph #3, Items #2 and #3 and Safety Rule 107.2, #8 and #9. 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 dark ink, 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  
J. Gbur - Please appear as Corporate Witness  
M. DeVito - Please appear as Corporate Witness

I hereby acknowledge receipt of the original of this letter.

Signed

Date

JB

NORTHEAST ILLINOIS COMMUTER RAILROAD CORPORATION  
NOTICE OF DISCIPLINE

--LABOR REL--

Name & address of supervisor assessing discipline:

01/02 23 53

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

May 17, 2002

Mr. Richard Sparks  
15210 S. Evers  
Dolton, IL 60419

The result of the investigation of May 1, 2002, has revealed your responsibility in connection with the violation of Metra Employee Conduct Rule "N", Paragraph #3, Item #2 and Safety Rule 107.2, #8 and #9. Therefore you are hereby assessed the following discipline which will also be entered on your personal record:

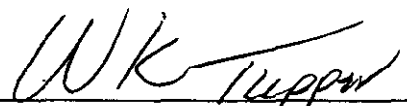

- ( ) 1. Formal reprimand (letter of particular attached).
- (X) 2. Three (3) days deferred suspension (with waiver one (1) day deferred) which will remain in effect for two (2) years and must be served as actual suspension if additional discipline is assessed during those years.**
- ( ) 3. Five (5) work days actual suspension (with waiver three (3) days plus deferred from Step 2).
- (X)3a. Your record indicates a deferred suspension of 3 days which was assessed on 9/13/01 and must be served in conjunction with discipline outlined above.**

Suspension will begin Monday, May 20, 2002 and end Wednesday, May 22, 2002. You must return to work on Thursday, May 23, 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

## METRA POLICE DEPARTMENT OFFENSE/INCIDENT REPORT

STATUS		ARREST		SUB REAR		PLACES		METHOD		ITEMS		PROPERTY		RECOVERY		STOLEN		RECOVERED		DESTROYED	
14	1020	1																			
<b>OFFENSE/INCIDENT</b> 1 OFFENSE/INCIDENT 2 LOCATION/ADDRESS OF OCCURRENCE 3 ADDRESS NAME (IF APPROPRIATE) 4 DATE & TIME OF OCCURRENCE 5 DATE & TIME REPORTED 6 OFFENSE/INCIDENT REPORT																					
<b>INCIDENT</b> 1 COMPLAINT (LAST, FIRST, MIDDLE) 2 NAME 3 ADDRESS 4 CITY 5 STATE 6 ZIP 7 PHONE																					
<b>WITNESSES</b> 1 NAME 2 ADDRESS 3 CITY 4 STATE 5 ZIP 6 PHONE																					
<b>VICTIM</b> 1 NAME 2 ADDRESS 3 CITY 4 STATE 5 ZIP 6 PHONE																					
<b>COMPL.</b> 1 NAME 2 ADDRESS 3 CITY 4 STATE 5 ZIP 6 PHONE																					
<b>SUSPECT</b> 1 NAME 2 ADDRESS 3 CITY 4 STATE 5 ZIP 6 PHONE																					
<b>VEHICLE</b> 1 YEAR 2 MAKE 3 MODEL 4 BODY STYLE 5 TOP COLOR 6 BOTTOM COLOR 7 VIN 8 VEHICLE IDENTIFICATION NUMBER (VIN) 9 VEHICLE DESCRIPTION CODES (OPTIONAL) UP TO 31 10 BODY DAMAGE 11 BROKEN/CRACKED GLASS 12 PRIMER ON VEHICLE 13 FOUR WHEEL DRIVE 14 TOP/ROOF HOOD 15 VEHICLE																					
<b>LEAD</b> 1 DATE & TIME ENTERED 2 OFFICER 3 ADDITIONAL ENTRIES																					

COMPLAINT NUMBER

EXHIBIT

2

102-4230

ENTRY - POINT OF - EXIT BY		38 MEANS OF	99 TOOL/OBJECT/WEAPON	100 TARGET	101 SECURITY DEFEATED	102 MISCELLANEOUS
DUA UNKNOWN OTHER BUILDING (A) BASMT DOOR (B) BASMT WINDOW (C) FRONT DOOR (D) REAR DOOR (E) SIDE DOOR (F) GRG OR (OVHD) (G) GRG OR (OTH.) (H) OTH OVHD OR (I) PATIO/OK OR (J) GARD FLOOR WD (K) UP FLOOR WD (L) SCRN/STRM OR (M) SCRN/STRM WD (N) TRANSOM (O) WALL (P) SKYLIGHT (Q) ROOF VEHICLE (R) FRONT DOOR (S) REAR DOOR (T) HATCHBACK/TAILGATE (U) REAR DOOR (V) SIDE WINDOW (W) WINDSHIELD (X) REAR WINDOW (Y) TOP CONVERT/T-TOP (Z) HOOD (1) TRUNK		DUA UNKNOWN OTHER ENTRY (A) OPEN (B) UNLOCKED (C) PRIED (D) SMASHED (E) FORCED (F) SLASHED (G) DISMANTLED (H) PULLED (I) PICKED (J) DRILLED (K) TORCHED (L) SAWED (M) CUT (N) PEELED DAMAGE (O) BB/PELLET DAMAGE (P) SMASHED (Q) SLASHED/PUNCTURED (R) SCRATCHED (S) PAINTED (T) BURNED (U) CORRODED (V) BATTERED (W) BLOWN UP (X) MULTIPLE MEANS	DUA UNKNOWN OTHER TOOL (A) PRY/CROW BAR (B) SCREWDRIVER (C) PIPE WRENCH (D) LOCK PULLER (E) PUNCH (F) KEY (G) LOCK PICK (H) SLIM JIM (I) DRILL (J) TORCH (K) SAW (L) BOLT CUTTER (M) PLIER/VISEGRIP (N) HAMMER OBJECT (O) SPRAY PAINT (P) SHARP OBJECT (Q) BLUNT INSTRU / (R) BLUDGEON (S) FLAM LIQUID (T) COMBUSTIBLE (U) EXPLOSIVE (V) PROJECTILE (W) CAUSTIC SUBST (X) BODY FOOT ETC (Y) CREDIT CARD (Z) CHECK WEAPON (1) REVOLVER (BLU/OK) (2) REVOLVER (SILVER) (3) AUTOMAT (BLU/OK) (4) AUTOMAT (SILVER) (5) RIFLE (6) SHOTGUN (7) KNIFE (8) MARTIAL ART WEAPON (9) STUN DEVICE (10) CHEMICAL DEVICE (11) BB/PELLET GUN	DUA UNKNOWN OTHER NON-RESIDENCE (A) CASH REGISTER (B) SAFE/MONEY BOX (C) COIN OR MACHINE (D) SALES AREA (E) DISPLAY (F) OFFICE (G) TOOL ROOM (H) STORAGE RM/AREA (I) CLASSROOM (J) SHOP (K) MULTI LOCATIONS RESIDENCE (L) GARAGE/CAR PORT (M) VEHICLE (N) BASEMENT (O) BEDROOM (P) LIVING ROOM (Q) FAM RM/DEM (R) KITCHEN (S) BATHROOM (T) DINING ROOM (U) ATTIC (V) STOR RM/SHED (W) MULTI LOCATIONS VEHICLE (X) PASSENG COMPRT (Y) GLOVE BOX (Z) CONSOLE (1) ENGINE COMPRTM (2) BODY (3) WHEELS/TIRES (4) UTILITY/COMMER VEH (5) STOR. AREA (6) RECREAT VEN. LIVING (7) AREA (8) MULTI LOCATIONS	DUA UNKNOWN OTHER (A) CHAIN/BOLT (B) DEADBOLT (C) CYLINDER OR LOCK (D) PADLOCK (E) CHARLIE BAR-SLIDING (F) WINDOW LOCKS (G) BARS/GRATE (H) ALARM-OUTSIDE (I) RINGER (J) ALARM-TO SEC. (K) COMPANY (L) ALARM-TO POL DEPT (M) ALARM-COMBIN (N) LAUDIBLE & DIRECT (O) CAMERA (P) FENCE (Q) DOG (R) WATCHMEN/GUARD (S) PRIV SEC PATROL 102 LIGHTING DUA UNKNOWN (A) DAYLIGHT (B) DAWN (C) DUSK (D) DARK-UNLIGHTED (E) OK -INTER LIGHT (F) OK -EXTER LIGHT (G) OK -INT & EXT. LGT	DUA UNKNOWN OTHER CRIMES AGAINST PROP (A) HQ IN PREMIS (B) RANSACKED (C) DEFECATED (D) FLUIDS (E) USED MATCHES (F) VANDALIZED (G) HIDES PROCEEDS IN AREA CRIMES AGNST PERSON (H) BLINDFOLD VICT (I) BOUND/GAGGED VICT (J) INJURED VICTIM (K) COMMITTED SEX (L) OFFENSE ON VICT (M) THREATS-WEAPON (N) THREATS-VERBAL (O) DEMAND NOTE GENERAL (P) HAD LOOKOUT (Q) USED MONITOR (R) USED CB RADIO (S) VEHICLE NEEDED TO REMOVE PROPERTY (T) DISABLED PHONE (U) DISABLED ALARM (V) DISABLED CAMERA (W) DISABLED UTILITY (X) USED GLOVES
INV.	104 ET REQUESTED YES <input checked="" type="checkbox"/> NO <input checked="" type="checkbox"/>	105 INVESTIGATOR/JO REQUESTED YES <input checked="" type="checkbox"/>	106 TIME REQUESTED	107 ET/INVESTIGATOR/JO ASSIGNED		
NARRATIVE	108 AT 1020 HRS. RIO MET B+B FOREMAN R. SPARKS (EMAIL#6681) AT CCF REFERENCE ACCIDENTAL DAMAGE TO COMPANY TRUCK #90810. FOREMAN SPARKS EXPLAINED THAT HE BELIEVED THAT WHILE EN ROUTE FROM BLUE ISLAND TO 47TH, THAT A MAN OF PIPE SHIFTED & STRUCK THE PROTECTIVE GATE ON THE TRUCK WHICH IN TURN STRUCK THE REAR WINDOW OF THE TRUCK AND CRACKED THE GLASS. FOREMAN SPARKS SAID THAT HE WAS UNAWARE OF WHEN THE GLASS ACTUALLY BROKE. THE DAMAGE WAS FIRST NOTICED UPON ARRIVAL AT 47TH STREET. NO FURTHER INFORMATION AVAILABLE. PROPERTY DAMAGE FORM # RC 4005 ATTACHED.					
STATUS	109 (1) UNFOUNDED (2) REFERRED TO OTHER JURISDICTION (3) PENDING INVESTIGATION (4) NO FURTHER ACTION (5) CLEARED BY ADULT ARREST (REQUIRES ARREST REPORT) (6) CLEARED BY JUVENILE ARREST (REQUIRES ARREST REPORT) (7) EXCEPTIONAL CLEARANCE-ADULT (8) EXCEPTIONAL CLEARANCE-JUVENILE					
SIGN	110 REPORTING OFFICER(S) A. H. H.	STAR # 922	111 SUPERVISOR H. H. K.	112 REVIEW OFFICER #29	11 -4236	

## PROPERTY DAMAGE/PERSONAL INJURY REPORT

Page 9

DATE OF OCCURRENCE <b>04-12-02</b>		TIME OF OCCURRENCE <b>9:57</b>		AM <input checked="" type="checkbox"/> PM <input type="checkbox"/>	
TRAIN NO. _____		ENGINE NO. _____		DIRECTION OF TRAVEL _____	
NEAREST RR STATION <b>51ST STREET FLAG STOP</b>		MILE POST LOCATION <b>5</b>		COMPASS _____	
CITY/TOWNSHIP <b>CHICAGO</b>		CITY/TOWNSHIP <b>CHICAGO</b>			
INITIALS & NOS. OF ENGINES & CARS DIRECTLY INVOLVED <b>NONE</b>					
TYPE OF OCCURRENCE		WITH		TYPE OF TRAIN	
<input type="checkbox"/> PASSENGER INJURY <input type="checkbox"/> EMPLOYEE INJURY <input checked="" type="checkbox"/> PROPERTY DAMAGE		<input type="checkbox"/> PASSENGER-FARE PAYING <input type="checkbox"/> PASSENGER-ON PASS <input type="checkbox"/> EMPLOYEE <input type="checkbox"/> PEDESTRIAN		<input type="checkbox"/> PASSENGER <input type="checkbox"/> WORK <input type="checkbox"/> SWITCHING	
<input type="checkbox"/> VANDALISM <input type="checkbox"/> OTHER _____		<input type="checkbox"/> TRESPASSER <input checked="" type="checkbox"/> MOTOR VEHICLE <input type="checkbox"/> OTHER _____		<input checked="" type="checkbox"/> OTHER <b>NONE</b> <b>TRUCK</b>	
NAME OF INJURED PERSON <b>NO INJURY</b>		ADDRESS, CITY _____		HOME PHONE _____	
DATE OF BIRTH _____		AGE _____		SEX _____	
SOCIAL SECURITY NO. _____		MARITAL STATUS _____			
EMPLOYER _____		OCCUPATION _____			
IF NIRC EMPLOYEE: _____		ORIGINAL SENIORITY DATE: _____		EMPLOYEE ID# _____	
NIRC SENIORITY DATE: _____		TAKEN BY _____			
NATURE OF INJURIES OR PROPERTY DAMAGE					
WEATHER		LIGHT		PLATFORM/GROUND	
<input type="checkbox"/> CLEAR <input checked="" type="checkbox"/> CLOUDY <input type="checkbox"/> RAIN <input type="checkbox"/> SNOW <input type="checkbox"/> SLEET <input type="checkbox"/> FOG		<input checked="" type="checkbox"/> DAYLIGHT <input type="checkbox"/> DAWN <input type="checkbox"/> DUSK <input type="checkbox"/> DARKNESS <input type="checkbox"/> ARTIFICIAL		<input checked="" type="checkbox"/> DRY <input checked="" type="checkbox"/> WET <input type="checkbox"/> SNOWICE <input type="checkbox"/> UNDER REPAIR <input type="checkbox"/> OTHER _____	
				ACTIONS OF INJURED PARTY	
				<input type="checkbox"/> BOARDING <input type="checkbox"/> ALIGHTING <input type="checkbox"/> CAUGHT IN DOORS <input type="checkbox"/> SEATED <input type="checkbox"/> IN MOTION WITHIN VEHICLE	
WERE POLICE PRESENT? <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES		OFFICER'S NAME _____		BADGE NO. _____	
POLICE ACTION		NAME OF FORCE _____			
TICKET TO _____		ARREST OF _____		OTHER _____	
PASSENGER INJURY, WHERE BOARDING: _____		DESTINATION _____			
DESCRIBE EXACTLY WHAT HAPPENED: <b>WAS CARRYING PIPE FROM BLUE ISLAND YARD TO 47TH YARD WHITE TRUCK #7800</b> <b>I BELIEVE THAT THE PIPE BUMP THE GATE IN THE BACK OF THE CAB, AND BROKE</b> <b>THE WINDOW OF THE TRUCK, ONCE WE STOP AT 47TH THE WINDOW WAS</b> <b>BROKEN,</b>					
SIGNATURE OF INJURED PERSON <b>RICHARD SPARKS JR</b>				DATE OF REPORT <b>04-12-2002</b>	
LIST WITNESSES TO ACCIDENT		ADDRESS, CITY _____		HOME PHONE _____	
1. _____		ADDRESS, CITY _____		HOME PHONE _____	
2. _____		SIGNATURE OF ENGINEER/CONDUCTOR/SUPERVISOR _____			
		PREPARER'S SIGNATURE (IF DIFFERENT) <b>[Signature] #922</b>			

## NORTHEAST ILLINOIS RAILROAD CORPORATION

I AUTHORIZE ANY DOCTOR, HOSPITAL, EMPLOYER, OR OTHER PERSON, TO WHOM A SIGNED OR PHOTO-COPY OF THIS AUTHORIZATION IS DELIVERED TO FURNISH ANY INFORMATION, REPORTS, MEDICAL REPORTS, OR COPIES OF RECORDS WHICH MAY BE REQUESTED BY THE NORTHEAST ILLINOIS RAILROAD CORPORATION.

DATE

NIRC  
547 WEST JACKSON  
CHICAGO, ILLINOIS 60681

EXHIBIT

5

☒ SIGNATURE

ADDRESS

CITY-STATE