

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1122

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

NMB Case No. 2

This case involves Mr. Allan F. Scott who is employed by Metra as a Machine Operator.

On July 27, 2000, Mr. Scott was assigned to work at Thatcher Avenue in River Grove, Illinois, on a road crossing repair project.

On the date of the incident, Mr. Scott was operating a Speed Swing machine and was assigned to assist in removing debris from a dumpster that had been overloaded with debris from the road crossing repair project.

Mr. Scott was working with and under the supervision of Mr. John Kostuch, B&B Foreman; Mr. Daniel Colantuono, B&B Foreman; Mr. Napala G. Bernal, Assistant Foreman; and Mr. Lawrence C. Powell, Maintenance Engineer Supervisor, who visited the work site at about 2:30 p.m. on July 27, 2000.

In the process of attempting to move the dumpster and unloading debris from the dumpster, the Speed Swing machine made contact with the dumpster that resulted in a minor dent in the electrical component box on the Speed Swing machine.

The incident did not cause any delay in the work involved in preparing the reopening of the road crossing project.

On August 2, 2000, Mr. Scott was hand delivered a letter from Mr. John A. Pebler, Director Milwaukee District Engineering, instructing him (Mr. Scott) to attend a formal investigation on Thursday, August 10, 2000, to develop facts, determine the cause and assess responsibility, if any, in connection with his alleged failure to properly report an incident and alleged failure to maintain the proper distance between a machine and the trash container he was working around, and Mr. Scott's alleged failure to fill out the proper report concerning the damage caused to the Speed Swing on July 27, 2000.

Additionally, Mr. Scott was charged with alleged violation of certain Carrier Rules and Regulations.

The investigation was subsequently postponed until August 30, 2000, and was held on that date.

Following the investigation, Mr. Scott received a letter dated September 18, 2000, from Mr. John A. Pebler, Director Milwaukee District, assessing Mr. Scott discipline of 10 Days Actual Suspension for violation of Metra Employee Conduct Rule L, OTS Rule 29.7.7 and GCOR Rules 1.1, 1.1.2 and 1.1.3, last sentence.

The transcript of the investigation held on August 30, 2000, 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 work involved at the Thatcher road crossing was routine Maintenance of Way work that is involved in all road crossing repair projects. Mr. Scott's assignment at the time of the incident was the operation of a Speed Swing machine.

The work of Mr. Scott and other employees at the work site consisted of preparing the road crossing so it could be open for service the next day.

Considerable debris from tearing up the road crossing was accumulated and the debris was placed in a large dumpster which was to be hauled away from the site.

It was determined by those in charge of the crossing repair project that the dumpster had been overloaded and some of the debris had to be removed so it could be handled by a container company assigned to hauling away the debris.

Mr. Scott was assigned to the Speed Swing machine and was directed to use his machine to remove some of the debris.

It was in this process that Mr. Powell, Maintenance Engineer Supervisor, came on the scene and became involved in the supervision of the work that was taking place.

It was in this process that the incident occurred that gave rise to this dispute and the charges against Mr. Scott.

In reviewing the transcript testimony, we find no support for the charge that Mr. Scott failed to report an incident. The incident occurred with several

supervisors present and, in particular, Mr. Powell who was the official with authority and jurisdiction over all those present.

If the incident was so serious that someone was negligent, it would seem appropriate to discuss what happened at that time. That was not done. In fact, the so-called damage was so minimal that the machine, according to the record, continued operation and did not warrant any repair. Secondly, there is no basis for charging Mr. Scott with alleged failure to maintain a proper distance between the machine Mr. Scott was operating and the trash container. Mr. Scott was working under the supervision of Mr. Powell and three other supervisors. Mr. Scott was following the hand signals of different individuals which placed him in a very precarious position. Thirdly, the charge that Mr. Scott failed to fill out the proper report concerning the damage to the Speed Swing machine is so frivolous that it defies common sense.

There is no evidence that any damage was done beyond the dent in a control box on the Speed Swing that straightened itself out when the machine moved away from the dumpster.

While there is considerable testimony contained in the transcript surrounding the incident on July 27, 2000, involving Mr. Scott, there is nothing to substantiate any of the charges against him.

While there is some basis for questioning the fairness and impartiality of the investigation raised by the Organization, we will confine our decision to the record and the specific charges against Mr. Scott.

Accordingly, it is the decision of this Board that the charges and discipline assessed Mr. Scott of 10 Days Actual Suspension be rescinded and his record cleared accordingly.

Mr. Scott to be compensated in total for all time lost.

AWARD:

Claim sustained. This Award to be complied with within thirty (30) days of the date of this Award.

Charles J. Chamberlain

Charles J. Chamberlain
Neutral Member

Date October 26, 2000