

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1122

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

NMB Case No. 20

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 April 17, 2002, instructing him to attend a formal investigation on Thursday, April 25, 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, Tuesday and Wednesday, April 8, 9 and 10, 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 and Employee Conduct Rule "N", Paragraph #3, Item #3.

The letter of April 17, 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 scheduled for April 25, 2002, was postponed until May 1, 2002, and held on that date.

Following the investigation, Mr. Unzueta was sent a Notice of Discipline letter dated May 17, 2002, assessing him discipline of ten (10) work days actual suspension.

The letter of May 17, 2002, is attached to this Award.

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:

The issue in this dispute is the unauthorized absence of Mr. Unzueta from work on his assigned position as Assistant Track Foreman on April 8, 9 and 10, 2002.

The investigation transcript reveals that Mr. Unzueta was not present at the investigation held on May 1, 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.

Denise Morehouse, Steno Clerk, Rock Island District, appeared as a witness at the request of Local Chairman Alan Scott.

In our review of the investigation transcript, we find that the circumstances that gave rise to this dispute, NMB Case No. 20, are almost identical to NMB Case No. 17, as they involve the same individual, Mr. Jesus Unzueta, same rule violations and a charge of unauthorized absences from work, the only difference being the dates involved. In this dispute, as in NMB Case No. 17, Mr. Unzueta did not appear at the investigation, but was represented by the Organization Representative Mr. Alan Scott, Local Chairman.

In this instant dispute, as in NMB Case 17, Mr. Scott agreed to proceed with the investigation despite the fact that Mr. Unzueta was not present.

The transcript testimony of Mr. Worley reveals that Mr. Unzueta did make a voice-mail call to Mr. Worley, however, there was nothing mentioned about an emergency situation which required him to be absent from duty on the days he was absent from work.

The transcript testimony of Ms. Denise Morehouse reveals that Mr. Unzueta did make a call to her about postponing the investigation from April 25, 2002, to another date, Wednesday, May 1, 2002, which would be better for him. However, the record shows that Mr. Unzueta did not appear at the investigation and did not alert or call either the Carrier Officers or his Organization Representative that he would not be present.

Based on the facts in the record before us, Mr. Unzueta failed to report for work on April 8, 9 and 10, 2002. Mr. Unzueta was absent without prior permission and accordingly was in violation of the Carrier rules as charged.

In reviewing the facts in this dispute and a review of the facts in Case NMB No. 17, it is clear that Mr. Unzueta has failed to recognize the importance and necessity to communicate with his supervisory officials concerning his unexplained absences from duty without permission.

We find it difficult to conceive that there is a language barrier which might be partly responsible for his conduct in view of his employment record which shows that he has been an employee since June 14, 1993.

During that period of time, he has held a number of positions which require skills and the ability to communicate with fellow employees and supervisory officials.


While there is nothing in the record of Case NMB No. 17 and the instant Case NMB No. 20 to reveal any reason for his unexplained, unauthorized absences from work, Mr. Unzueta must soon recognize the dire consequences of further incidents of failure to comply with Carrier Rules and regulations.

Based on the record before us, Mr. Unzueta failed to report for work on April 8, 9 and 10, 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 ten (10) work days actual suspension assessed Mr. Unzueta in this dispute:

AWARD:

Claim denied.



Charles J. Chamberlain
Neutral Member

Date July 19, 2002



NOTICE OF INVESTIGATION

17 APR 02 3: 07

April 17, 2002

--LABOR REL--

US MAIL AND CERTIFIED MAIL #7000 1670 0003 4409 8939

Mr. Jesus Unzueta
14001 S. Western Avenue, Lot 309
Blue Island, IL 60406

Dear Mr. Unzueta:

You are hereby instructed to attend a formal investigation which will be held on Thursday, April 25, 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 excessive unauthorized and unpaid absences. It is alleged that you were absent on Monday, April 8 through Wednesday, April 10, 2002 without authorization from your Supervisor. It is also alleged that you failed to follow confirmed instructions given to you on unpaid and unauthorized absences. Therefore you are hereby charged with alleged violation of Metra's Employee Conduct Rule "Q", Paragraph 1, Metra's Special Instruction #1, Pages 1 and 2 and Employee Conduct Rule "N", Paragraph #3, Item #3. 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,


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

I hereby acknowledge receipt of the original of this letter.

Signed

Date

JB

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NORTHEAST ILLINOIS COMMUTER RAILROAD CORPORATION
NOTICE OF DISCIPLINE

Name & address of supervisor assessing discipline:

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

May 17, 2002

65 57 20 AM 02

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

--LABOR REL--

The result of the investigation of May 1, 2002, has revealed your responsibility in connection with the violation of Metra Employee Conduct Rule "Q", Paragraph #1, Rule "N", Paragraph #3, Item #3 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.
- () 3. Five (5) work days actual suspension (with waiver three (3) days plus deferred from Step 2).
- () 3a. Your record indicates a deferred suspension of __ day which was assessed on _____ and must be served in conjunction with discipline outlined above.

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.

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

Suspension will begin Saturday, May 18, 2002 and end Friday, May 31, 2002. You must return to work on Saturday, June 1, 2002. Failure to return to work on that date will be treated as an unauthorized absence.

- () 5. Dismissal.


Signature & Title of Supervisor assessing discipline