

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1122

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

NMB Case No. 26

This dispute involves Mr. Zenaïdo Leon employed by Metra as a Track Inspector.

Mr. Leon was hand delivered a letter dated November 13, 2002, instructing him to attend a formal investigation on Wednesday, November 20, 2002, for the purpose of developing the facts, determine the cause and assess responsibility, if any, in connection with his alleged failure to maintain constant presence of mind to insure safety of the Metra vehicle he was driving and carelessness of company property, by not insuring that he maintained proper distance between vehicles while performing his duties on Tuesday, November 12, 2002, at approximately 2:30 p.m. The above incident allegedly having caused damage to a company vehicle.

In connection therewith you are charged with alleged violation of the following Metra Employee Conduct Rules: General Rule II. "General Notice, Safety is of the first importance in the discharge of duty." Metra Employee Conduct Rules "L", Paragraph 2 "They must inform themselves as to the location of structures or obstructions where clearances are close." Also Rule "N", 2 "Employees must not be: 2.) "Negligent."

The letter of November 13, 2002, is attached to this Award.

The investigation was postponed until December 4, 2002, and held on that date.

Following the investigation, Mr. Leon was sent a letter dated December 19, 2002, advising him that a review of the investigation transcript held on December 4, 2002, has resulted in Mr. Leon being issued discipline of Five (5) work days suspension.

The letter of discipline dated December 19, 2002, is attached to this Award.

The transcript of the investigation held on December 4, 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 at Roundout on November 12, 2002, when Mr. Leon was parking a company vehicle in the garage at Roundout. Following the incident, Mr. Leon, the Claimant in this dispute, was charged with responsibility for causing damage to a company vehicle on November 12, 2002. The record shows that the Claimant was the driver of a company truck that scraped another vehicle in a parking area, which resulted in some minor damage to the

company truck. The Claimant acknowledged that as he was parking the vehicle, and in trying to avoid hitting a ladder near the front of the vehicle, "got too close and scraped the other truck."

The Board is not impressed with the notion, as advanced by the Claimant's representative, that the Claimant was placed in an untenable situation because he had to avoid obstacles to the front and rear in parking the company truck. The Claimant testified that he could have arranged to have the ladder and/or the other vehicle moved. It is clear that he could have avoided both obstacles and parked the truck without causing any damage. Accordingly, the Board has no basis for substituting its judgment for that of the Carrier in regard to the Claimant's responsibility in this matter.

After establishing that the Claimant was responsible for the damage to the company truck, the Carrier certainly had the prerogative to impose appropriate discipline. It is well established, however, that discipline should be progressive, not punitive, and reasonably related to the seriousness of the infraction. The discipline assessed in this case clearly does not meet that criteria.

The concept of progressive discipline, which serves as the foundation for the Carrier's discipline policy, first dictates that discipline must be commensurate with the infraction. In this case, the Claimant committed, at worst, a very minor infraction that resulted in negligible damage to a company vehicle. There is nothing in the record indicating he was guilty of the kind of gross negligence or carelessness that would justify the harsh penalty of a five-day suspension.

The concept of progressive discipline also dictates consideration of an employee's record and in this case we have a long time employee with an excellent record. His record includes a single entry of discipline, involving a reprimand issued in 1997. The Claimant's record certainly does not reflect the kind of recurring misconduct that would justify assessment of such a harsh penalty.

This Board must conclude that it was a gross abuse of the Carrier's managerial discretion to impose a five-day suspension in this case. Under the circumstances, it would seem that this situation should have been addressed through a verbal conference with this Claimant. The Board can see no justification for anything beyond that. Accordingly, the Board directs that this discipline be removed from the Claimant's record and that he be compensated for the time lost as a result of his suspension.

AWARD:

Claim sustained in accordance with the above findings.

Charles J. Chamberlain

Charles J. Chamberlain
Neutral Member

Date January 24, 2003

NORTHEAST ILLINOIS RAILROAD CORPORATION
Milwaukee District Engineering
2931 West Chicago Avenue
Chicago, Illinois 60622

NOTICE OF INVESTIGATION

November 13, 2002

Hand Delivered

Mr. Z. Leon, Track Inspector

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, on Wednesday, November 20, 2002 at 9:00 am.

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 maintain constant presence of mind to insure safety of the Metra vehicle you were driving and carelessness of company property, by not insuring that you maintained proper distance between vehicles while performing your duties on Tuesday, November 12, 2002 at approximately 2:30 PM. The above incident allegedly having caused a damage to a company vehicle.

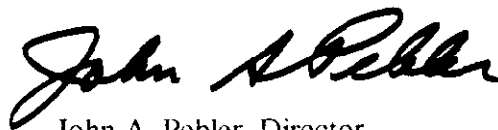
In connection therewith you are charged with alleged violation of the following Metra Employee Conduct Rules.

General Rule II. "General Notice, Safety is of the first importance in the discharge of duty."

Metra Employee conduct Rules "L", Paragraph 2 "They must inform themselves as to the location of structures or obstructions where clearances are close." **Also Rule "N", 2** "Employees must not be: 2.) "Negligent."

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, and your representative will be given the opportunity to present evidence and testimony in your behalf and to cross examine any witnesses testifying against you.



John A. Pebler, Director
Milwaukee District Engineering

G/C BMW E

L/C BMW E

V. L. Stoner

W. K. Tupper

Safety

Labor relations

Human Resources

K. Rabe ----- Please arrange to appear as company witness

-Enc. 11/13/02-

11/13/02

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NORTHEAST ILLINOIS RAILROAD CORPORATION

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

--LATOR TEL--

RESULTS OF INVESTIGATION

26 DEC 02 2:45

December 19, 2002

Mr. Z. Leon, Track Foreman, #6596

A review of the transcripts of **the investigation**, scheduled for November 20, 2002, postponed and held on December 4, 2002, **has resulted in the following discipline being issued: Five (5) work days suspension.**

The assessment of the above discipline will be placed on your record as outlined in the progressive discipline policy.

Yours truly,



David P. Leahy, Maintenance Engineering Supervisor
Milwaukee District Engineering
(312) 322-4118

DPL/tmc

cc: C/C-BMWE-Wimmer
L/C-BMWE-Kmiec
V. L. Stoner
W. K. Tupper
R. C. Schuster
G. Washington
P. Connor
J. Barton
C. Cary

NORTHEAST ILLINOIS REGIONAL COMMUTER RAILROAD CORPORATION

NOTICE OF DISCIPLINE

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Z. Leon

MWD-North Line

David P. Leahy

Employee Name

Work Location

Supervisor assessing discipline

DATE: December 19, 2002

X FORMAL INVESTIGATION
SCHEDULED FOR NOVEMBER 20, 2002,
POSTPONED AND HELD ON DECEMBER 4, 2002

WAIVER OF INVESTIGATION

Has indicated your responsibility in connection with the violation of the following rules: General Rule II, Rule L, Paragraph No. 2, and Rule N, Paragraph 3, Item No. 2-Metra Employee Conduct Rules; when you failed to maintain constant presence of mind to insure safety of the Metra vehicle you were driving and carelessness of company property by not insuring that you maintained proper distance between vehicles while performing your duties and causing damage to said company vehicle on Tuesday, November 12, 2002 at approximately 2:30 p.m. Therefore, you are hereby assessed the following discipline which will also be entered on your personal record:

<u>Formal</u>	<u>Waiver</u>
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
X 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)
<p>Your record indicates a deferred suspension of ____ day(s) was assessed on _____ and must be served in conjunction with discipline outlined above.</p> <p>As a result, suspension will begin <u>Monday, January 6, 2003</u> and end <u>Friday, January 10, 2003</u>. You must return to work on <u>Monday, January 13, 2003</u>. Failure to return on that date will be treated as an unauthorized absence.</p>	
4. Ten (10) work days suspension	4. Seven (7) work days suspension
<p>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.</p>	
5. Dismissal	5. Dismissal
<p>Your employment with this Corporation is terminated effective _____. You must return all company property.</p>	

Employee

Union Witness

Supervisor assessing discipline

cc: Metra Personnel