

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1122

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

NMB Case No. 3

This case involves Mr. Ignacio Duran who is employed by Metra as a Rail Gang Foreman.

On Sunday, July 2, 2000, Mr. Duran was supervising and assisting a couple of his trackmen in cutting and drilling a rail at a work site in Morton Grove, Illinois.

Mr. Duran was working with and under the direction of Mr. Robert Gage, Project Roadmaster.

In the process of working with and assisting his co-workers in cutting and drilling a rail, Mr. Duran, after finishing the process, stepped one step backward and his left foot went down in the adjacent rail crib causing him to lose his balance and fall backward. Mr. Duran extended his right arm to break his fall. Mr. Duran fell in the direction of the recently cut rail and his right forearm struck the sharp edge of the rail cutting his arm, which required six-count stitches.

An injury report was filed at about 7:30 p.m. on July 2, 2000, by Mr. Gage, the Project Roadmaster.

On July 12, 2000, Mr. Duran was hand delivered a letter from Mr. John A. Pebler, Director, Milwaukee District Engineering, instructing Mr. Duran to attend

a formal investigation on July 19, 2000, at 9:00 a.m. for the purpose of developing the facts, determine the cause and assess responsibility, if any, in connection with his failure to maintain constant presence of mind to insure safety of himself and his alleged carelessness of his safety by not insuring that he maintained proper footing while performing duties on Sunday, July 2, 2000, at approximately 1:30 p.m.

Additionally, Mr. Duran was charged with alleged violation of certain Carrier Rules and Regulations. The letter of July 12, 2000, is attached to this Award.

The investigation was subsequently postponed until September 7, 2000, and was held on that date.

Following the investigation, Mr. Duran received a letter dated September 27, 2000, from Mr. John A. Pebler, Director, Milwaukee District Engineering, assessing Mr. Duran discipline of Three (3) work days deferred suspension for violation of Metra Employee Conduct Rules; General Notice II, Rule L and Rule N.1.

The letter of September 27, 2000, is attached to this Award.

The transcript of the investigation held on September 7, 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 transcript in this case consists primarily of the testimony of Mr. Robert Gage, Project Roadmaster, and the accused Mr. Ignacio Duran.

Mr. Gage's testimony described the work activity that was taking place on Sunday, July 2, 2000.

Mr. Duran's testimony did not differ from Mr. Gage's testimony as to what took place and the sequence of events that led to the incident and injury sustained by Mr. Duran.

The record shows that Mr. Duran was a Gang Foreman in charge of a large crew performing track work in connection with the rail project underway at Morton Grove, Illinois. Mr. Duran, as Foreman of a large crew of employees performing many and varied duties in connection with the rail-laying project, was utilizing his skills to assist two fellow employees in cutting and drilling a rail.

On completion of participation in the cutting and rail drilling process, Mr. Duran stepped back and lost his footing causing him to fall and sustain an injury to his arm.

Mr. Gage, Mr. Duran's immediate supervisor, testified that he did not observe Mr. Duran doing anything incorrect or unsafe. Mr. Gage further testified that he did not believe Mr. Duran did anything wrong.

Mr. Duran, as Foreman in charge of a large crew of employees, has tremendous oversight responsibility for all the work that was being performed. Because of his knowledge, skill and expertise in all functions of the work being performed, Mr. Duran was assisting two fellow employees in the crew cutting and drilling a rail. Following that process, Mr. Duran stepped back to get out of the way for employees carrying a rail drill. In so doing, Mr. Duran stepped in loose ballast and lost his footing causing him to fall and sustain an injury to his right arm.

We find it impossible to give any credence or support for the Carrier's charges against Mr. Duran in this dispute.

Mr. Duran's actions in this dispute did not in any way violate the rules as charged by the Carrier. It is ludicrous to suggest that he failed to maintain constant presence of mind to insure safety to himself and others.

Accordingly, it is the decision of this Board that the discipline of Three (3) work days deferred suspension be rescinded and removed from his personal record.

AWARD:

Claim sustained.



Charles J. Chamberlain  
Neutral Member

Date November 30, 2000

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

**NOTICE OF INVESTIGATION**

July 12, 2000

Hand Delivered

**Mr. I. Duran, Foreman, Rail Gang**

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, July 19, 2000 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 yourself and alleged carelessness of your safety by not insuring that you maintained proper footing while performing your duties on Sunday, July 2, 2000 at approximately 1:30 PM. The above incident allegedly having caused a personal injury.

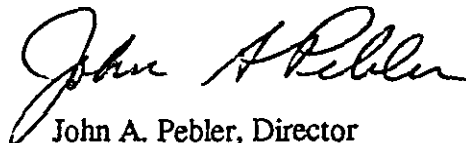
In connection therewith you are charged with alleged violation of the following Metra Employee Conduct Rules,

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

**Metra Employee conduct Rules "L",** Constant presence of mind to insure safety to themselves and others is the primary duty of all employees and they must exercise care to avoid injury to themselves or others." Also Rule "N", 1) "Employees must not be: 1) Careless of the safety of themselves and others."

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

R.Gage ----- Please arrange to appear as company witness

**NORTHEAST ILLINOIS RAILROAD CORPORATION**

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

**Results of Investigation****Certified Mail**

Mr. I. Duran, Foreman  
Capital Gang


September 27, 2000

A review of the transcript of the investigation, scheduled for July 19, 2000, postponed until August 23, 2000 and postponed until September 7, 2000, has resulted in the following discipline being issued. Which will be placed on your record as outlined in the progressive discipline policy.

**RULE VIOLATIONS:** Employee Conduct Rules; General Notice II, Rule L and Rule N.1

**DISCIPLINE:** See attached Notice of Discipline for (3) THREE DAYS DEFERRED  
SUSPENSION

Yours truly,

  
John A. Pebler, Director  
Milwaukee District Engineering  
(312) 322-4101

JAP/lcp

cc: G/C-BMWE  
L/C-BMWE  
V. L. Stoner  
W. K. Tupper  
R. C. Schuster  
G. Washington  
H. Thomas  
J. Barton  
C. Cary

## NORTHEAST ILLINOIS REGIONAL COMMUTER RAILROAD CORPORATION

## NOTICE OF DISCIPLINE

I. Duran	Morton Grove	John A. Pebler
Employee Name	Work Location	Supervisor assessing discipline

DATE: September 27, 2000

X FORMAL INVESTIGATION  
SCHEDULED FOR JULY 19, 2000  
POSTPONED UNTIL AUGUST 23, 2000  
POSTPONED TO SEPTEMBER 7, 2000

WAIVER OF INVESTIGATION

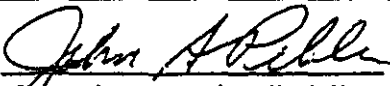
Has indicated your responsibility in connection with the violation of Metra Employee Conduct Rules; General Notice II, Rule L and Rule N.1, when you failed to maintain a constant presence of mind to insure safety for yourself, by not insuring that you had proper footing while performing your duties on July 2, 2000. Therefore, you are hereby assessed the following discipline which will also be entered on your personal record:

<i>Formal</i>	<i>Waiver</i>
1. Formal Letter of Reprimand (effective for two years)	1. Formal Letter of Reprimand (effective for one year)
X 2. Three (3) work days deferred suspension	2. One (1) work day deferred suspension
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)
Your record indicates a deferred suspension of ____ day(s) was assessed on _____ and must be served in conjunction with discipline outlined above.  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.	
4. Ten (10) work days suspension	4. Seven (7) work days suspension
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.	
5. Dismissal	5. Dismissal
Your employment with this Corporation is terminated effective _____. You must return all company property.	

---

Employee

---

Union Witness  
Supervisor assessing discipline

cc: Metra Personnel