

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1122

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

NMB Case No. 31

This dispute involves Mr. Martin DeVito employed by Metra as B & B Foreman, Rock Island District.

On February 7, 2003, Mr. DeVito was sent a letter instructing him to attend a formal investigation on February 14, 2003, for the purpose of developing the facts, determine the cause and assess responsibility, if any, in connection with your alleged dishonesty in 1) during an investigation held on January 30, 2003, allegedly giving false information concerning access routes to the parking lot of an apartment complex at 11020 through 11032 S. 76th Avenue in Palos Hills, Illinois; 2) claiming in a written statement on January 23, 2003, that you had no knowledge of events that led to the removal from service of employee Michael Asher and the formal investigation held on January 30, 2003.

In connection, therewith, you are charged with the alleged violation of Metra Employee Conduct Rule N - Item 4, "Employees must not be dishonest."

Your personal work record will be reviewed at this investigation. (Copy attached)

The investigation was held on February 14, 2003.

Following the investigation, Mr. DeVito was hand delivered a Notice of Discipline letter dated March 3, 2003, assessing him discipline of Ten (10) work days actual suspension for violation of Metra Employee Conduct Rule N - Item 4.

The letter of February 7, 2003, calling for the investigation and the letter dated March 3, 2003, (Notice of Discipline) are attached to this Award.

The transcript of the investigation held on February 14, 2003, 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:

Mr. Martin DeVito, the Claimant in this dispute, was a witness in NMB Case No. 28, involving Mr. Michael Asher, Machine Operator for Metra.

In NMB Case No. 28, Mr. Asher was charged by the Carrier for violation of Carrier Rules for his unauthorized use of Metra's time and Vehicle #91061 in spreading salt in an apartment complex at 11032 S. 76th Avenue in Palos Hills, Illinois, on January 14, 2003.

In NMB Case No. 28, this Board upheld the Carrier's decision to dismiss Mr. Asher from service effective February 7, 2003.

The Carrier's decision in NMB Case No. 28 was based on the credible testimony of Mr. Dean Cashman, the key witness in the dispute who observed and reported the incident to Metra authorities.

Mr. Asher's account of how he entered the apartment complex differed from Mr. Cashman's testimony as to what took place. Mr. Asher testified that he came off Southwest Highway by the bowling alley and entered the apartment complex parking lot through a rear entrance.

Mr. DeVito, the Claimant in this dispute, testified at the January 30, 2003, investigation that there was no rear entrance to the apartment complex, which is the residence of Mr. DeVito.

On further questioning by the Organization Representative, Mr. DeVito changed his story and testified that there was a rear entrance.

The change in Mr. DeVito's statement raised the question of credibility which has resulted in the Carrier initiating the dispute we have before us in NMB Case 31.

The charges against Mr. DeVito in the instant dispute are alleged dishonesty in giving false information at the investigation held on January 30, 2003, concerning access routes to the apartment complex at 11020 through 11032 S. 76th Avenue in Palos Hills, Illinois, and in addition claiming in a written statement on January 23, 2003, that he had no knowledge of events that led to the removal from service of employee Michael Asher.

There is no question as to the role that Mr. DeVito played in the investigation held on January 30, 2003, concerning the incident involving Mr. Asher and the Metra truck at the apartment complex parking lot on January 14, 2003.

Mr. DeVito by his testimony in collaborating with the testimony of Mr. Asher, implicated himself and is guilty of the charges against him in this dispute.

Accordingly, the discipline assessed Mr. DeVito of Ten (10) work days actual suspension is fully justified by the record before us, and there is no basis for changing the Carrier's decision in this Case.

AWARD:

Claim denied.



Charles J. Chamberlain
Neutral Member

Date May 9, 2003

547 W. Jackson Blvd.

Chicago, Illinois 60661

Telephone: 312-322-6900

TTY# 1-312-322-6774

NOTICE OF INVESTIGATION

February 7, 2003

HAND DELIVERED & CERTIFIED MAILED #7000 1670 0003 4410 1264

Mr. Martin W. De Vito - #6108
11032 S. 78th Avenue
Palos, Hills, IL 60465

Dear Mr. De Vito,

You are hereby instructed to attend a formal investigation that will be held in the office of the Director of Engineering, Rock Island District, 2067 W. 123rd Street, Blue Island, Illinois, on February 14, 2003 at 11:00 a.m..

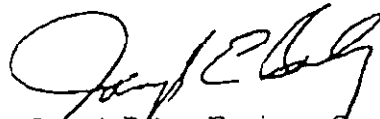
The purpose for this investigation is to develop the facts, determine the cause and assess responsibility, if any, in connection with your alleged dishonesty in 1) during an investigation held on January 30, 2003, allegedly giving false information concerning access routes to the parking lot of an apartment complex at 11020 through 11032 S. 76th Avenue in Palos Hills, Illinois; 2) claiming in a written statement on January 23, 2003 that you had no knowledge of events that led to the removal from service of employee Michael Asher and the formal investigation held on January 30, 2003.

In connection, therewith, you are charged with the alleged violation of Metra Employee Conduct Rule N-Item 4, "Employees must not be dishonest."

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.

G/C H. J. Granier
L/C T. P. Petty
V. L. Stoner
W. K. Tupper
R. C. Schuster
G. Washington
H. Thomas
J. Barton
C. Cary


Joseph Riley, Engineer Standards
Engineering

Larry Powell, General B&B Supervisor - Please arrange to appear as company witness
Moses Richardson, Director Rock Island Engineering - Please arrange to appear as company witness

JSB
NORTHEAST ILLINOIS COMMUTER RAILROAD CORPORATION
NOTICE OF DISCIPLINE

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Name & address of supervisor assessing discipline:

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

March 3, 2003

HAND DELIVERED

Mr. Martin W. DeVito
11036 S. 76th Avenue
Palos Hills, IL 60465

The result of the investigation of February 14, 2003 has revealed your responsibility in connection with the violation of Metra Employee Conduct Rule "N", Item #4. 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).
- () 3. 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 _____ and end _____. You must return to work on _____. Failure to return to work on that date will be treated as an unauthorized absence.*

***Time served from February 10 through March 3, 2003.**

- () 5. Dismissal. Your employment relationship with this Corporation is terminated and your record closed _____. You must immediately return all company property to Moses Richardson, Rock Island District, 2067 W. 123rd Street, Blue Island, IL 60406.

WK Tupper CED
Signature & Title of Supervisor assessing discipline