

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1122

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

NMB Case No. 33

This dispute involves Mr. Juan J. Rivera employed on the Metra Electric District as a Track Inspector.

On April 15, 2003, Mr. Rivera was hand delivered a letter requesting him to attend a formal investigation on Tuesday, April 22, 2003, for the purpose of determining the cause and assess responsibility, if any, in connection with his alleged failure to call the flagman to obtain permission to enter the work limits listed on Form B-302, Line 2, of Track Warrant 3041102, dated April 11, 2003. Mr. Rivera was charged with possible violation of Metra Maintenance of Way Rule 15.2.

At the request of the Organization, the investigation was postponed until Wednesday, April 30, 2003, and held on that date.

Following the investigation, Mr. Rivera received a Notice of Discipline letter dated May 16, 2003, assessing him discipline of Fifteen (15) Days Actual Suspension for violation of NIRCRC Rules for failure to call the flagman to obtain permission to enter the work limits listed on Form B-302, Line 2 of Track Warrant 3041102, dated April 11, 2003.

The letter of April 15, 2003, calling for the investigation and the Notice of Discipline letter of May 16, 2003, are attached to this Award.

The transcript of the investigation held on April 30, 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:

On April 11, 2003, Mr. Rivera was assigned to go out on Track No. 4 and do his usual inspection. Mr. Rivera testified that when he arrived at the limits of Form B, there was no flag displayed and no one was around or working at the location. Mr. Rivera testified that he thought he heard the dispatcher on the radio saying that the Form B Line 2 was cancelled.

Mr. Rivera then proceeded through the area and, as a precaution, blew his horn. When Mr. Rivera arrived at 51<sup>st</sup> Street, he asked permission from the tower operator to proceed and went north. When Mr. Rivera called the dispatcher to cancel his track permit, he was informed that Form B was still in effect.

Mr. Rivera testified that he did not call the flagman because he thought Form B was cancelled and there was no flag at the site and no one was working in the area.

Mr. Mike Stuckey, Road Master, Metra Electric testified that he was called by Randolph Control and told that Mr. Rivera had passed through a work area without contacting the flagman.

Mr. Stuckey testified that he discussed the incident with Mr. Rivera less than an hour after the occurrence, and Mr. Rivera advised him what had taken place.

Mr. Joe Garzon was the flagman in charge of the Form B area on the day of the incident.

Mr. Garzon testified that he was advised that there was no flag visible at the entry of the territory covered by Form B. Mr. Garzon testified that he walked over to the area and found that the flag which he placed there in the morning was down apparently being blown down by the wind. Mr. Garzon replaced the flag in its proper position.

We have reviewed the testimony of all who testified at the investigation, and the record shows that Form B was not cancelled as assumed by Mr. Rivera, the Claimant, in this dispute.

Mr. Rivera should have contacted the flagman or the dispatcher before proceeding through the area.

The Board cannot ignore this aspect of the dispute.

Accordingly, there is basis for disciplinary action, however, we question the justification for assessing Mr. Rivera fifteen (15) days actual suspension.

Mr. Rivera has a good record in his 25 years of service in the railroad industry.

Mr. Stuckey testified that Mr. Rivera was an excellent track inspector.

Based on the record before us, this Board is of the opinion that the discipline assessed Mr. Rivera was unreasonable and excessive.

It is our decision that the fifteen (15) days actual suspension should be reduced to five (5) days actual suspension consistent with Step 3 of the Carrier's progressive discipline policy.

Mr. Rivera should be compensated for all days in excess of five (5) days that he was out of service and his record changed to reflect the decision of this Board in this dispute.

AWARD:

Partially sustained in accordance with the above findings.

*Charles J. Chamberlain*

Charles J. Chamberlain  
Neutral Member

Date June 17, 2003



Metra KYD Facility  
12301 S. Indiana Avenue  
Chicago, IL 60628

April 15, 2003

HAND DELIVERED

Juan J. Rivera Emp. #2661  
621 Ingraham Avenue  
Calumet City, IL 60409

Dear Sir:

Arrange to attend a formal investigation to be held in the KYD Conference Room, 12301 S. Indiana Avenue, Chicago, IL 60628, at 9:00 a.m., Tuesday, April 22, 2003.

The purpose of this investigation is to develop the facts, determine the cause, and assess responsibility, if any, in connection with your alleged failure to call the flagman to obtain permission to enter the work limits listed on Form B-302, Line 2, of Track Warrant 3041102, dated April 11, 2003.

In connection therewith, you are charged with possible violation of Metra Maintenance of Way Rule 15.2.

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.

Your past personal record may be reviewed at this investigation (copy attached).

Sincerely,

A handwritten signature in black ink, appearing to read "W. T. Archer", is written over the word "Sincerely,".

W. T. Archer  
M/E Engineering Department

Attachment

cc: V. L. Stoner	G. Washington
W. K. Tupper	P. Connors
R. C. Schuster	P. Zwolfer
C. Cary	H. J. Granier, G/C
J. Barton	T. P. Petty, L/C
D. Mogan	

M. J. Stuckey - Please arrange to attend as a witness.  
J. Garrison - " " " " " " "



**NORTHEAST ILLINOIS REGIONAL COMMUTER RAILROAD CORP.**

**NOTICE OF DISCIPLINE**

W. K. Tupper

SUPERVISOR ASSESSING DISCIPLINE

547 W. Jackson Blvd., 7th Fl.

WORK LOCATION

May 16, 2003

DATE

J. Rivera, Emp. No. 2661

EMPLOYEE NAME (TYPE OR PRINT)

☒ Formal Investigation ☐ Waiver of Formal Investigation (check proper box) has indicated your responsibility for violation of NIRCRC Rules in the following incident (describe):

Failure to call the flagman to obtain permission to enter the work limits listed on Form B-302, Line 2 of Track Warrant 3041102, dated April 11, 2003.

Therefore, you are assessed the following discipline which will also be entered into your personal employment record (check appropriate box or boxes).

☐ **1. Formal reprimand** (letter attached).

☐ If you waive investigation, the reprimand letter will be effective for one year.

☐ **2. Three days deferred suspension** [this suspension will remain deferred for 2 years and will be served as actual suspension if further discipline is assessed during that period.]

☐ If you waive investigation, one day of deferred suspension is assessed instead of three days.

☐ 3. Five days actual suspension.

- ☐ If you waive investigation, three days of suspension will be served instead of five days, plus the deferred days from Step 2.
- ☐ Your record indicates deferred suspension of \_\_\_\_\_ days which was assessed on \_\_\_\_\_ and must be served in conjunction with discipline noted above.

☐ 4. Ten days actual suspension.

- ☐ If you waive investigation, seven days of suspension will be served instead of ten days.

☒ 5. Period of Suspension (if applicable). Fifteen (15) Days Actual Suspension.

Suspension from your job assignment will begin on May 16, 2003 and will end May 30, 2003. You must return to work on May 31, 2003. Failure to return on that date will be regarded as an unauthorized absence.

- ☐ 6. Dismissal. Your employment with this corporation is terminated effective \_\_\_\_\_ (date). You must immediately return all company property.

11AM  
Time

5/16/03  
Date

W. K. Supper, Chief Eng. Off. M.G.K.  
Signature & title of Supvr assessing discipline

J. J. B. B. B.  
Employee

\_\_\_\_\_  
Union Witness

cc: Metra Personnel