

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1122

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

NMB Case No. 34

This dispute involves Mr. Sean Holmes employed by Metra as a Capital B&B Foreman.

On November 8, 2003, Mr. Holmes and his crew were assigned to work at Prairie Crossing for the purpose of pouring two 24 foot long concrete pours.

On November 9, 2003, Mr. Holmes was assigned to perform various duties for the Carrier which included picking up certain tools which were to be used by the crew on Monday, November 10, 2003.

Mr. Daniel Colantuono, B&B Capital Supervisor, was Mr. Holmes immediate Supervisor and issued instructions as to the work to be performed by Mr. Holmes and his crew for both days of November 8 and 9, 2003.

On November 17, 2003, Mr. Holmes was hand-delivered a Notice of Investigation letter instructing Mr. Holmes to attend a formal investigation on Tuesday, November 25, 2003. The letter read in part as follows:

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 follow instructions from your supervisor, alleged theft of time and alleged dishonesty on November 8, 2003, at Prairie Crossing and your alleged failure to follow instructions on November 9, 2003. When you were allegedly were dishonest in reporting the correct amount of hours worked on November 8, 2003.

Also, you allegedly failed to follow your supervisors instruction to pick up all tools from Foreman Donze on November 9, 2003.

In connection therewith you are charged with alleged violation of the following Metra Employee Conduct Rules, General Notice II, Lines 2 & 3; General Notice III B paragraph #1 and Rule N, paragraph #3, Item #4.

The Notice of Investigation letter of November 17, 2003, is attached to this Award.

The investigation was postponed until December 16, 2003, at the request of Mr. Mark Wimmer, General Chairman for the Brotherhood of Maintenance of Way Employes, who represented Mr. Holmes.

The investigation was again postponed to January 8, 2004, by mutual agreement between the Carrier and Organization.

The investigation was held on January 8, 2004.

Following the investigation, Mr. Holmes received a Notice of Discipline letter assessing Ten (10) work days suspension – Step #4 of the Carrier's Progressive Discipline Policy.

The letter dated January 27, 2004, is attached to this Award.

The transcript of the investigation held on January 8, 2004, 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 Employes and the Northeast Illinois Regional Commuter Railroad Corporation (Metra) dated November 12, 1999. SBA No. 1122.

FINDINGS:

Mr. Holmes was instructed by Mr. Dan Colantuono, B&B Capital Supervisor, to perform work with his crew on a road crossing project at Prairie Crossing on November 8, 2003.

The work assignment included the pouring of two 24 foot long concrete pours. The work was performed by Mr. Holmes and his crew on November 8, 2003.

Mr. Holmes was assigned by Mr. Colantuono to perform various duties on November 9, 2003, which included picking up certain tools which were to be used on a project on Monday, November 10, 2003.

On November 10, 2003, Mr. Colantuono reviewed the time sheets submitted by Mr. Holmes for himself and his crew for the work performed on Saturday, November 8, 2003, and noted that the time sheet listed 12 hours for Mr. Holmes and each member of his crew – 6:00 a.m. to 6:00 p.m. Mr. Colantuono questioned the amount of hours that was turned in by Mr. Holmes for himself and crew, and Mr. Holmes stated that it was snowing, and he could not finish the concrete because he had to put the tarps down.

Mr. Colantuono then personally went to each member of Mr. Holmes' crew, and they told him that they worked until approximately 3:30 p.m. on Saturday, November 8, 2003.

Six members of Mr. Holmes' crew later signed statements that they worked from 6:00 a.m. to 3:30 p.m. on November 8, 2003, which confirmed what they had told Mr. Colantuono on November 10, 2003.

The issue in this dispute centers on the time sheet (Engineering Department Work Report) submitted by Mr. Holmes for himself and members of his crew for Saturday, November 8, 2003. Mr. Holmes listed 12 hours of work for himself and all other members of his crew (Exhibit #5 attached). Mr. Holmes indicated on the time report that the entire crew worked from 6:00 a.m. until 6:00 p.m.

Mr. Holmes, as the foreman of the crew, was responsible for accurately reporting the actual time worked by the employees assigned to his crew. In this case, he reported that they all worked until 6:00 p.m. The employees stated that they all left work at 3:30 p.m.

During the investigation, Mr. Holmes and his representative tried to explain away the discrepancy as an inadvertent mistake that perhaps was due to Mr. Holmes' inexperience and/or lack of training. The Board finds no basis for giving any credence to that explanation.

First, there is clear evidence that Mr. Holmes was well aware of when his crew members finished work for the day. He indicated that two of the employees, Eddie Andrade and Sam Zavala actually left the job site at 2:00 p.m. He also indicated that he was with three of the other crew members, Richard Deschner, Dennis Kowalski and Jose Medina, when they finished work and returned to the shop. Those crew members all stated that they left at 3:30 p.m.

Mr. Holmes obviously had no basis for indicating on the time report that the employees on the crew finished work at 6:00 p.m. Even if he worked until 6:00 p.m. himself (and that is far from certain), he knew that the other employees did not. Under the circumstances, it could not be construed as an inadvertent error to give employees credit for that much additional time (four hours for one group and 2.5 hours for another).

Second, it would be less than straightforward to suggest that Mr. Holmes did not understand that he needed to be accurate in reporting his crew's work time or that he needed specific training on that requirement. That is simply not a credible defense.

Based on the evidence, there was nothing arbitrary or unreasonable in the Carrier concluding that Mr. Holmes was less than honest in reporting the amount of time worked by his crew. The record contains substantial evidence to support the charge that Mr. Holmes failed to accurately and honestly report the hours worked on November 8, 2003, and the Board upholds the Carrier's finding of guilt on that charge.

Concerning the charge that Mr. Holmes failed to follow instructions in picking up the tools on November 9, 2003, the record does not contain sufficient evidence to establish that he was guilty of any misconduct in that regard. Kyle Donze, the employee who was providing the tools to Mr. Holmes, summarized the situation best when he stated that there seemed to be a misunderstanding on Mr. Holmes' part. There is nothing in the record that would indicate that Mr. Holmes

deliberately defied his instructions. Accordingly, the Board finds that the Carrier did not meet the burden of proving that particular charge.

With regard to the measure of discipline, there can be no question that dishonesty in any form is a very serious offense. In many instances, employees have been terminated for not accurately reporting time worked. Under the circumstances, the Board cannot find that the Carrier was unreasonable in assessing Mr. Holmes with a ten-day suspension.

Accordingly, based on the record before us, it is the decision of this Board that Mr. Holmes was guilty as charged for his failing to report the correct amount of hours worked on November 8, 2003.

AWARD:

Claim denied.



Charles J. Chamberlain
Neutral Member

Date April 23, 2004

NORTHEAST ILLINOIS RAILROAD CORPORATION

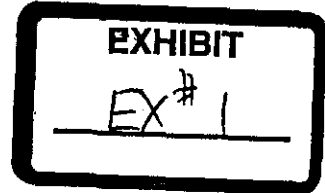
Milwaukee District Engineering
2931 West Chicago Avenue
Chicago, Illinois 60622

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Awd 34
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NOTICE OF INVESTIGATION

November 17, 2003

HAND DELIVERED
Mr. S. Holmes, #8556
B&B Foreman
Fox Lake



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 Tuesday, November 25, 2003 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 follow instructions from your supervisor, alleged theft of time and alleged dishonesty on November 8, 2003, at Prairie Crossing and your alleged failure to follow instructions on November 9, 2003. When you were allegedly were dishonest in reporting the correct amount of hours worked on November 8, 2003. Also, you allegedly failed to follow your supervisors instruction to pick up all tools from Foreman Donze on November 9, 2003.

In connection therewith you are charged with alleged violation of the following Metra Employee Conduct Rules, General Notice II, Lines 2 & 3 ; General Notice III B paragraph #1 and Rule N, paragraph #3, Item #4.

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.

A handwritten signature in black ink, appearing to read "Robert Williams".

Robert Williams, B&B Supervisor
Engineering - Capital

G/C BMWE

L/C BMWE

V. L. Stoner

W. K. Tupper

R. C. Schuster

G. Washington

P. Connor

J. Barton

C. Cary

D. Colantuono, B&B Supervisor ----- Please arrange to appear as company witness

K. Donze, B&B Foreman ----- Please arrange to appear as company witness

A. Mieszanek B&B Mechanic ----- Please arrange to appear as company witness

S. Zavala, B&B Mechanic ----- Please arrange to appear as company witness

E. Andrade, Jr., B&B Mechanic ----- Please arrange to appear as company witness

D. Kowalski, B&B Mechanic ----- Please arrange to appear as company witness

R. Deschner, Machine Operator ----- Please arrange to appear as company witness

NORTHEAST ILLINOIS REGIONAL COMMUTER RAILROAD CORPORATION
MILWAUKEE DISTRICT ENGINEERING DEPARTMENT
2931 W. CHICAGO AVE., CHICAGO, ILLINOIS 60622

NOTICE OF DISCIPLINE

S. Holmes, #8556
Employee Name

Prairie View
Work Location

David P. Leahy
Supervisor assessing discipline

DATE: January 27, 2004

X FORMAL INVESTIGATION SCHEDULED FOR NOVEMBER 8, 2003, POSTPONED FOR DECEMBER 16, 2003, POSTPONED AND HELD ON JANUARY 8, 2004

WAIVER OF INVESTIGATION

Charge: Failure to follow instructions from your supervisor, theft of time and dishonesty on November 8, 2003 at Prairie Crossing and your failure to follow instruction on November 9, 2003; dishonesty in reporting the correct amount of hours worked on November 8, 2003 and your failure to follow your supervisor's instructions to pick up all tools from Foreman Donze on November 9, 2003.

Rule(s) Violation: Employee Conduct Rules, General Notice II, Lines 2 & 3, General Notice III, B, Paragraph #1 and Rule N, Paragraphs 3 & 4.

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

<u>Formal</u>	<u>Waiver</u>
<input type="checkbox"/> 1. Formal Letter of Reprimand (effective for two years)	<input type="checkbox"/> 1. Formal Letter of Reprimand (effective for one year)
<input type="checkbox"/> 2. Three (3) work days deferred suspension	<input type="checkbox"/> 2. One (1) work day deferred suspension
<input type="checkbox"/> 3. Five (5) work days suspension plus the deferred days from step two (2)	<input type="checkbox"/> 3. Three (3) work days suspension plus the deferred days from step two (2). During your suspension, you are expected to contact the EAP Coordinator at 1.800.227.8620 or 312.726.8620.
<input type="checkbox"/> 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.	

<input checked="" type="checkbox"/> 4. Ten (10) work days suspension	<input type="checkbox"/> 4. Seven (7) work days suspension
As a result, suspension will begin <u>Wednesday, January 28, 2004</u> and end <u>Tuesday, February 10, 2004</u> . You must return to work on <u>Wednesday, February 11, 2004</u> . Failure to return on that date will be treated as an unauthorized absence.	
<input type="checkbox"/> 5. Dismissal	<input type="checkbox"/> 5. Dismissal
<input type="checkbox"/> Your employment with this Corporation is terminated effective _____. You must return all company property.	
<input checked="" type="checkbox"/> DEVIATION FROM THE PROGRESSIVE DISCIPLINE STEPS The Chief Operations Officer has determined that the discipline of Step # <u>4</u> shall be assessed based on the circumstance in this case for the reason(s) stated below: Seriousness of the offense.	

10:17AM
Time

27 JAN 04
Date

David P. Leahy
Supervisor Assessing Discipline David P. Leahy
Maintenance Engineering Supervisor

1:12 P.m.
Time

1/27/04
Date

Sean Z. Holmes
Charged Employee-Sean Holmes

Time

Date

Union Representative

Time

Date

Witness

cc: V. Stoner
R. C. Schuster
W. K. Tupper
C. Washington
C. Cary
P. Connor
J. Barton
GC-BMWE - WIMMER
LC-BMWE- KMIEC

FAX 18476782721
003 08:33METRA CAPITAL-PP
METRAL POWELL
1 847 587 9203 P.04005
P.04

Headquarters Location

Fox Lake 10922

Payroll

Sean J. Holmes

ENGINEERING DEPARTMENT WORK REPORT

Day
SaturdayDate
11/8/03

Function	Project	Job Location/Description of Work Include Vehicle/Equipment Used and Indicate to Driver/Operator	Start Time	End Time	Crew Size Alpha No	Total Hours
1052	AP2981	poured concrete at Prairie Crossing (H.C.) and tapered for night LO813 (D) LO715 (C)	10:00 A	10:00 P	A 6	76
1052	S52764	helped w/ lighting at Prairie LO865 (B)	10:00 A	10:00 P	B 1	12

EXHIBIT

EX #5

TOTAL MAN HOURS REPORTED

SUPERVISOR APPROVAL

PAYROLL LABOR REPORT

Position Worked Override Default - Job	Est. Hours (hr)	Name	Emp No	AE	OT	XP	*Other Than C Code	H
Foreman	✓	A S. Holmes	8556		12			
Asst Foreman	✓	A. Mieszanek ✓	7558		12			
Driver	✓	C J. Medina ✓	8346		12			
Driver	✓	D. Kowalski ✓	8560		12			
Mechanic		E. Andrade Jr. ✓	8326		12			
Mechanic		S. Zavala ✓	7936		12			
Mechanic		C. Essertie	8338					
Machine Operator		R. Deschner ✓	3477		12			

MATERIAL USAGE REPORT

☐ ATTACHED ☐ NONE

TOTAL HOURS

84

OTR - Absent
TIME FAM - Family LeaveSIL - Sick Leave
HT - Half DayDIS - Discipline
JVA - Jury Duty
OTR - OvertimeDK - Deck Time
NR - No Hours
TR - Train HoursDT - Double Time
PD - Personal
VF - Vacation