

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1122

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

NMB Case No. 36

This dispute involves Mr. Eugene Howell employed by Metra as a B&B Foreman and Mr. Curtis Streeter employed by Metra as a B&B Mechanic.

Mr. Howell and Mr. Streeter received a letter dated January 30, 2004, from the Carrier instructing them to attend a formal investigation at 9:00 a.m. on Thursday, February 5, 2004, for the purpose of developing the facts, determining the cause, and assess responsibility, if any, in connection with their alleged involvement in connection with a reported series of verbal altercations which took place on Saturday, January 17, 2004, when Mr. Eugene Howell allegedly confronted Mr. Curtis Streeter at Valois Restaurant, while Mr. Streeter was on duty; and Mr. Curtis Streeter, on his Company issued Nextel phone, reportedly made a threatening telephone call to Mr. Eugene Howell; while assigned as Metra Electric B&B Foreman, headquartered at KYD; and Metra Electric B&B Mechanic, headquartered at 14th Street, respectively.

In connection therewith, they were both charged with possible violation of Metra Employee Conduct Rule N, Paragraphs 1, 2 & 3, Items 4 & 6.

The letter of January 30, 2004, is attached to this Award. The investigation was held on February 5, 2004.

Following the investigation, Mr. Howell received a Notice of Discipline letter dated February 23, 2004, dismissing him from service effective February 23, 2004, for violation of Metra Employee Conduct Rule N, Paragraphs 1, 2 & 3, Items 4 & 6.

The transcript of the investigation held on February 5, 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 Employees and the Northeast Illinois Regional Commuter Railroad Corporation (Metra) dated November 12, 1999. SBA No. 1122.

FINDINGS:

The incident that gave rise to this dispute occurred on Saturday, January 17, 2004, at Valois Restaurant where Mr. Curtis Streeter and two fellow Metra employees, Mr. Trenidale Evans and Mr. Dennis Kowalski, had stopped by for coffee.

The three Metra employees were on snow duty assignment which entailed cleaning Metra station platforms, removing snow and ice and spreading salt.

While in the restaurant, Mr. Eugene Howell, a B&B Foreman, came in the restaurant and allegedly walked up to Mr. Streeter and used profane language which included the term "faggot."

Mr. Evans and Mr. Kowalski both testified at the investigation that Mr. Howell used derogatory terms in addressing Mr. Streeter and invited Mr. Streeter to step outside. Both employees testified that Mr. Streeter's reaction to the confrontation by Mr. Howell consisted of "I can't believe you're doing this." Mr. Howell then left the restaurant.

The record reveals that Mr. Howell was not on duty on Saturday, January 17, 2004, but had an appointment with his personal physician whose office was in close proximity to the restaurant.

The testimony of Mr. Howell and Mr. Streeter in the transcript differs as to what was said in the verbal altercation between them; however, there is no variance with respect to the testimony of Mr. Evans and Mr. Kowalski as to what transpired.

The record reveals that Mr. Howell filed a report with the Metra police that Mr. Streeter had called him at his home later in the day and threatened him. Mr. Streeter admitted to calling Mr. Howell but testified that he did not threaten him. Once again, we have before us conflicting testimony by Mr. Howell and Mr. Streeter. There is no way that we can prove or disprove what was said in the phone conversation between Mr. Streeter and Mr. Howell.

Accordingly, the Board must confine itself to the issue before us in this dispute which is the charge by the Carrier that Mr. Howell was responsible for the verbal altercation that took place on Saturday, January 17, 2004, at Valois Restaurant.

The record in the transcript testimony clearly reveals that Mr. Howell was the instigator of the verbal confrontation with Mr. Streeter. The testimony of Mr. Evans and Mr. Kowalski verifies that fact.

It is apparent to the Board that Mr. Howell ignored or forgot the incident between Mr. Streeter and himself in a prior dispute which was before this Board in NMB Case No. 32.

The Board found Mr. Howell guilty of the charge in that dispute, but reinstated Mr. Howell on a leniency basis with a warning to him that any future incidents could result in serious consequences.

Accordingly, based on the record before us, it is the decision of the Board that Mr. Howell was guilty as charged by the Carrier in this dispute.

AWARD:

Claim denied.



Charles J. Chamberlain
Neutral Member

Date May 10, 2004

W. T. Archer - This is a formal investigation held pursuant to Notice of Investigation dated January 30, 2004, this notice was sent out to Mr. Eugene Howell, Employee Number 2773; and Mr. Curtis Streeter, Employee Number 6234. The notice reads as follows:

Metra Electric Engineering Department
KYD Facility
12301 So. Indiana Avenue
Chicago, IL 60628

January 30, 2004

FED EX TRACKING NO.:
8383 6664 5076

FED EX TRACKING NO.:
8383 6664 5065

Mr. Eugene Howell, Emp. No. 2773
11227 So. King Drive
Chicago, Illinois 60628

Mr. Curtis Streeter, Emp. No. 6234
6351 So. Rhodes Avenue
Chicago, Illinois 60637

"Gentlemen:

Arrange to attend a formal investigation to be held in the KYD Conference Room, 12301 So. Indiana Avenue, Chicago, Illinois 60628, at 9:00 a.m., Thursday, February 5, 2004.

The purpose of this investigation is to develop the facts, determine the cause, and access responsibility, if any, in connection with your alleged involvement in connection with a reported series of verbal altercations which took place on Saturday, January 17, 2004, when Mr. Eugene Howell allegedly confronted Mr. Curtis Streeter at Valois Restaurant, while Mr. Streeter was on duty; and Mr. Curtis Streeter, on his Company issued Nextel phone, reportedly made a threatening telephone call to Mr. Eugene Howell; while assigned as Metra Electric B&B Foreman, headquartered at KYD; and Metra Electric B&B Mechanic, headquartered at 14th Street, respectively.

In connection therewith, you are both charged with possible violation of Metra Employee Conduct Rule N, Paragraphs 1, 2 & 3, Items 4 & 6.

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 records may be reviewed at this investigation (copy attached)."

Sincerely,

W. T. Archer, Director
Metra Electric Engineering Department

cc: V. L. Stoner
W. K. Tupper
R. C. Schuster
C. Cary
J. Barton

G. Washington
F. Leonard
P. Connor
H. J. Granier, G/C BMWE
T. Petty, L/C BMWE

J. A. Bailey - Please arrange to appear as Company witnesses.
Capt. T. Dorsey - " " " " " "
D. Kowalski - " " " " " "
T. Evans - " " " " " "

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NORTHEAST ILLINOIS REGIONAL COMMUTER RAILROAD CORP.

NOTICE OF DISCIPLINE

Fed Ex 8383 6664 5087

Certified Mail No.

February 23, 2004

Date

(Copy also sent U.S. Mail)

Mr. Eugene Howell, Emp. No. 2773
11227 So. King Drive
Chicago, Illinois 60628

Employee Name and Address

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

Charge: Pursuant to Investigation held on February 5, 2004: Your involvement in a verbal altercation which took place on Saturday, January 17, 2004, at Valois Restaurant.

Rule Violation: Metra Employee Conduct Rule N, Paragraphs 1, 2 & 3 (Items 4&6).

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

- ☐ 1. **Letter of Reprimand** (letter attached, effective for two (2) years).
- ☐ • If you waive investigation, the reprimand letter will be effective for one (1) year.
- ☐ 2. **Three Work Days Deferred Suspension** (this suspension will remain deferred for two (2) years and will be served as actual suspension if further discipline is assessed during that period).
- ☐ • If you waive investigation, one (1) day of deferred suspension is assessed instead of three (3) days.
- ☐ 3. **Five Work Days Actual Suspension**
- ☐ • If you waive investigation, three (3) work days of suspension will be served instead of five (5) work days, plus the deferred days from Step 2. **During your suspension, you are expected to contact the EAP Provider at (312) 726-8620 or 1-800-227-8620 and schedule an interview.**
- ☐ Your record indicates deferred suspension of _____ work day(s) which was assessed on _____ and must be served in conjunction with discipline noted above.

(Name)
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(Date)

☐ 4. Ten Work Days Actual Suspension.

- ☐ • If you waive investigation, seven (7) work days of suspension will be served instead of ten (10) work days.

☒ 5. Dismissal: Your employment with this corporation is terminated effective 02/23/04 (Date). You must immediately return all company property.

☐ PERIOD OF SUSPENSION (IF APPLICABLE).
Suspension from your job assignment will begin on _____ and will end
_____. You must return to work on _____. Failure
to return on that date will be regarded as an unauthorized absence.

☐ DEVIATION FROM THE PROGRESSIVE DISCIPLINE STEPS
The Chief Operations Officer has determined that the discipline of Step # _____ shall be
assessed based on the circumstance in this case for the reason(s) stated below:

W K Tupper CHIEF ENGINEERING OFFICER
Signature & Title of Supervisor Assessing Discipline

11:00 AM 2/23/04
Time Date

Employee

Union Witness

cc: V. L. Stoner
W. K. Tupper
R. C. Schuster
J. L. Barton
G. M. Washington
C. P. Cary
P. J. Connor
Director
General Chairman - U.S. Mail
Local Chairman - U.S. Mail