

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1122

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

NMB Case No. 37

This dispute involves Mr. Guillermo E. Ponce employed by Metra as a Water Service Foreman.

Mr. Ponce has been employed by Metra since July 1993.

On Saturday, November 22, 2003, he was involved in an incident while driving a company vehicle in the Western Avenue Coach Yard.

On November 26, 2003, Mr. Ponce was sent a Certified Notice of Investigation letter instructing him to attend a formal investigation on Thursday, December 4, 2003, at 9:00 a.m. for the purpose of developing the facts, determining the cause and assess responsibility, if any, in connection with his alleged carelessness while driving a company vehicle which sustained damage in the Western Avenue Coach Yard on Saturday, November 22, 2003.

Mr. Ponce was charged with alleged violation of the following Carrier rules: Safety Rules and General Procedures Rules, Rule No. 107.2, Item No. 8 and Rule No. 107.5, Item No. 2.

The Notice of Investigation letter of November 26, 2003, is attached to this Award.

The investigation was postponed until Tuesday, February 10, 2004, and held on that date.

Following the investigation, Mr. Ponce received a Notice of Discipline letter dated March 1, 2004, assessing him discipline of Three (3) work days deferred suspension, Step 2 of the Carrier's Progressive Discipline Policy.

The letter of March 1, 2004, is attached to this Award.

The transcript of the investigation held on February 10, 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:

In our review of the transcript in this Case, there is no dispute as to the facts in the incident involving Mr. Ponce that occurred on Saturday, November 22, 2003, at the Western Avenue Coach Yard.

Mr. Ponce got in a company truck that was parked parallel to another company truck. In driving the truck from where it was parked, the vehicle came in contact with a fire hydrant that was located between the two trucks. The fire hydrant was not protected by guardrails.

Mr. Ponce testified that he noticed the fire hydrant when he attempted to walk around the truck before moving it. Mr. Ponce stated that he closed doors and cabinets on the truck he was moving before driving it from where it was parked.

It is clear from the testimony of Mr. Ponce that he followed proper procedures before entering the truck and moving it from where it was parked. It is evident that because of the location of the fire hydrant, which was in close proximity to the two trucks, Mr. Ponce may have misjudged as to how close the fire hydrant was to his truck. Mr. Ponce testified that he could not walk around his truck which may have been a contributing factor to the incident which caused damage to his truck when it was driven from the place where it was parked.

The record reveals that Mr. Ponce was not careless or reckless in what occurred in this dispute.

Mr. Ponce has a clean record in working for Metra in various positions during his ten (10) years of service.

However, there was damage done to the truck that occurred when Mr. Ponce moved the truck from where it was parked.

Accordingly, while Mr. Ponce must assume responsibility for what occurred, the Board is of the opinion that the discipline assessed Mr. Ponce of Three (3) work days deferred suspension, Step 2 of the Carrier's Progressive Discipline Policy, is excessive and directs the Carrier to reduce the discipline to a Letter of Reprimand, Step 1 of the Carrier's Progressive Discipline Policy.

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AWARD:

Claim partially sustained in accordance with the above Findings.

Charles J. Chamberlain

Charles J. Chamberlain
Neutral Member

Date July 19, 2004

NORTHEAST ILLINOIS RAILROAD CORPORATION

Milwaukee District Engineering
2931 West Chicago Avenue
Chicago, Illinois 60622

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NOTICE OF INVESTIGATION

November 26, 2003

US MAIL & CERTIFIED MAIL #7002 2030 0004 3439 9253

Mr. G. Ponce, Water Service Foreman, #6758

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 Thursday, December 4, 2003 at 9:00 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 carelessness while driving a company vehicle in the Western Avenue Coach Yard which sustained damage on Saturday, November 22, 2003.

In connection therewith you are charged with alleged violation of the following rules: **Safety Rules and General Procedures Rules, Rule No. 107.2, Item No. 8 and Rule No. 107.5, Item No. 2.**

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. Your representative will be given the opportunity to present evidence and testimony in your behalf and to cross-examine any witnesses testifying against you.



David P. Leahy, Maintenance Engineering Supervisor
Milwaukee District Engineering

G/C-BMWE-WIMMER

L/C-BMWE-KMIEC

V. L. Stoner

R. C. Schuster

W. K. Tupper

G. Washington

P. Connor

J. Barton

C. Cary

DEC 03 3:47

LABOR REL---

NORTHEAST ILLINOIS REGIONAL COMMUTER RAILROAD CORPORATION

MILWAUKEE DISTRICT ENGINEERING DEPARTMENT
2931 W. CHICAGO AVE., CHICAGO, ILLINOIS 60622

NOTICE OF DISCIPLINE

C. Ponce, #6758
Employee Name

Western Avenue
Work Location

James D. Renfrow
Supervisor assessing discipline

DATE: March 1, 2004

X FORMAL INVESTIGATION SCHEDULED FOR DECEMBER 4, 2003, POSTPONED TO JANUARY 7, 2004, POSTPONED TO JANUARY 28, 2004, POSTPONED TO FEBRUARY 3, 2004, POSTPONED AND HELD FEBRUARY 10, 2004

WAIVER OF INVESTIGATION

Charge: Carelessness while driving a company vehicle in the Western Avenue Coach Yard which sustained damage on Saturday, November 22, 2003.

Rule(s) Violation: Safety Rules and General Procedures Rules, Rule No. 107.2, Item No. 8 and Rule No. 107.5, Item No. 2.

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 checked="" 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 type="checkbox"/> 4. Ten (10) work days suspension	<input type="checkbox"/> 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.	
<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 type="checkbox"/> 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:	

11:49 AM 3-1-04 James D. Renfrow
Time Date Supervisor Assessing Discipline
James D. Renfrow, Director

Time Date Charged Employee-G. Ponce

Time Date Union Representative

Time Date Witness

cc: V. Stoner
R. C. Schuster
W. K. Tupper
G. Washington
C. Cary
P. Connor
J. Barton
CC-BMWE - Granier
LC-BMWE- Petty