

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1122

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

NMB Case No. 38

This dispute involves Mr. Manuel D. Cornejo, Jr., employed by Metra as a Trackman, CDL Driver.

Mr. Cornejo has been employed by Metra since May 7, 2001.

On Saturday, April 3, 2004, Mr. Cornejo was working in a crew under the supervision of Foreman Jesus Salazar. The crew was engaged in building a platform at Hanover Park.

Mr. Salazar sent Mr. Cornejo and Mr. Dewan Westbrooks to put up flags to protect the work site of the platform installation.

In the process of setting up the flag, Mr. Cornejo injured his right index finger while using a sledge hammer to install the flag.

Mr. Cornejo was taken to Dr. Fischer, the Company doctor for treatment on his finger.

On April 7, 2004, Mr. Cornejo was sent a Certified letter instructing him to attend a formal investigation on Thursday, April 15, 2004, to develop the facts and determine the cause and assess responsibility, if any, in connection with his alleged failure to work safely and protect himself from injuries on Saturday, April 3, 2004, while setting a track flag with a maul at Hanson Park.

In connection, therewith, Mr. Cornejo was charged with alleged violation of Metra Rule N, Paragraph 3, Item 1—Employee Conduct Rules and Rule 1.1.2—Safety Rules and General Procedures Manual.

The Notice of Investigation letter of April 7, 2004, is attached to this Award.

The investigation was postponed by mutual agreement between the parties and subsequently held on June 23, 2004.

Following the investigation, Mr. Cornejo received a Notice of Discipline letter dated July 9, 2004, assessing him discipline of Three (3) work days deferred suspension for violation of Rule N, Paragraph 3, Item 1—Employee Conduct Rules and Rule 1.1.2—Safety Rules and General Procedures Manual.

The Notice of Discipline letter of July 9, 2004, is attached to this Award.

The transcript of the investigation held on June 23, 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. Cornejo that occurred on Saturday, April 3, 2004.

Mr. Cornejo and Mr. DeWan Westerbrooks were assigned by Foreman Salazar to set up flags to protect the work site of a station platform at Hanover Park.

Mr. Westbrooks testified that in setting up a yellow flag, he held the flag and Mr. Cornejo used a sledge hammer to pound the flag spike into the ground. In the process of pounding the flag spike, Mr. Cornejo testified that he may have partially missed the flag spike which caused his hand to slide down the maul and against the flag spike. Mr. Cornejo stated that he felt a pinch in his gloved hand; however, he did not realize what had happened until he removed his glove and noticed his bloody finger. Mr. Cornejo was taken to Dr. Fischer, the Company doctor, for treatment of his finger.

The transcript testimony of those involved clearly reveals what transpired in the incident.

Mr. Cornejo accidentally injured his finger in the process of setting up a flag. Mr. Westbrooks, who participated in the process, testified that Mr. Cornejo did everything right, and there was no evidence of reckless or careless conduct on the part of Mr. Cornejo. Mr. Cornejo testified that he was alert and aware of what he was doing; however, because of what happened, he was a little careless. Mr. Cornejo testified that he was not careless about his safety as he had performed similar procedures many times before.

In our review of the transcript testimony, it is clear that there was no evidence of willful or reckless conduct on the part of Mr. Cornejo.

Mr. Cornejo has a clear record in his three (3) years of service with the Carrier. Mr. Cornejo followed all of the necessary procedures and went to the Company doctor for treatment of his injured finger.

Mr. Cornejo most certainly did not intend to injure himself, but accidents do happen. In this case, the fact that the injury was self-inflicted will certainly ensure that he will make sure it does not happen again.

Accordingly, this Board is of the opinion that the discipline assessed Mr. Cornejo of Three (3) work days deferred suspension is excessive and should be reduced to a Formal Letter of Reprimand effective for one (1) year, and Mr. Cornejo's record to be changed accordingly.

AWARD:

Claim partially sustained in accordance with the above Findings.



Charles J. Chamberlain
Neutral Member

Date August 25, 2004

NORTHEAST ILLINOIS RAILROAD CORPORATION

Chicago Union Station Engineering
2931 West Chicago Avenue, Chicago, Illinois 60622

NOTICE OF INVESTIGATION

April 7, 2004

CERTIFIED MAIL #7002 2030 0004 3439 9345 & US MAIL

M. Cornejo, Jr., Machine Operator, # 8334

You are hereby instructed to attend a formal investigation which will be held in the office of the Director of Engineering, Chicago Union Station District, 2931 W. Chicago Ave, Chicago, Illinois 60622, Thursday, April 15, 2004 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 failure to work safely and protect yourself from injury on Saturday, April 3, 2004 while setting a track flag with a maul at Hanson Park.

In connection, therewith, you are charged with the alleged violation of the following Metra rules: *Rule N, Paragraph 3, Item 1 - Employee Conduct Rules* and *Rule No. 1.1.2 - Safety Rules and General Procedures Manual*.

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.

G/C BMW- GRANIER

V/C BMW- TRICHE

L/C BMW- PETTY

V. L. Stoner

W. K. Tupper

R. C. Schuster

G. Washington

P. Connor

J. Barton

C. Cary

L. Powell----- Please arrange to appear as a company witness

D. Westbrook--- Please arrange to appear as a company witness

J. Salazar----- Please arrange to appear as a company witness



James D. Renfrow, Director

MCORNEJO.WPD

I hereby acknowledge receipt of this letter.

Signature

Date

CARRIER EXHIBIT # 1

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

NOTICE OF DISCIPLINE

<u>M. Cornejo, Jr., #8334</u> Employee Name	<u>Milwaukee District</u> Work Location	<u>James D. Renfrow</u> Supervisor assessing discipline
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DATE: July 9, 2004

X FORMAL INVESTIGATION SCHEDULED FOR APRIL 15, 2004, POSTPONED TO APRIL 23, 2004, POSTPONED TO MAY 26, 2004, POSTPONED AND HELD JUNE 23, 2004 **WAIVER OF INVESTIGATION**

Charge: Failure to work safely and protect yourself from injury on Saturday, April 3, 2004 while setting a track flag with a maul at Hanson Park.

Rule(s) Violation: Rule N, Paragraph 3, Item 1 - Employee Conduct Rules and Rule No. 1.1.2 - Safety Rules and General Procedures Manual.

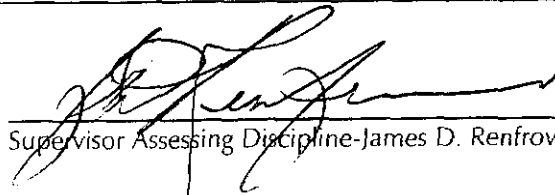
Therefore, you are assessed the following discipline which will also be entered into your personal employment record (check appropriate box or boxes).

<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:	

12:45P
 Time

7-9-04
 Date


 Supervisor Assessing Discipline-James D. Renfrow, Director

 Time

 Date

 Charged Employee-M. Cornejo, Jr.

 Time

 Date

 Union Representative

 Time

 Date

 Witness

cc: V. Stoner
 R. C. Schuster
 W. K. Tupper
 G. Washington
 B.H.Smith
 C. Cary
 J. Barton
 GC-BMWE - GRANIER
 VC-BMWE- TRICHE
 LC-BMWE- PETTY