

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1122

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

NMB Case No. 39

This dispute involves Mr. Walter Marusiak employed by Metra on a Class A Machine Operator Truck Driver position.

On September 22, 2004, Mr. Marusiak was sent a Certified letter requesting him to attend a formal investigation on Thursday, September 30, 2004, for the purpose of developing the facts, determine the cause and assess responsibility, if any, in connection with his alleged failure to properly protect his position as Machine Operator when he was absent without proper authority on Wednesday, September 22, 2004.

In connection therewith, Mr. Marusiak was charged with alleged violation of Rule Q -- Metra Employee Conduct Rules and Engineering Department Special Instruction No. 1 Paragraph Nos. 4 & 6 concerning Metra's Engineering Department Attendance Policy.

The letter of September 22, 2004, calling for the investigation is attached to this Award.

At the request of the Organization, the investigation was postponed until October 1, 2004, and held on that date.

Following the investigation, Mr. Marusiak received a Notice of Discipline letter dated October 8, 2004, assessing him discipline of Three (3) work days deferred suspension as a result of the current Rules violation and three (3) work days actual suspension from Step Two (2) deferred assessed January 27, 2004, for previous Safety violation.

The Notice of Discipline letter of October 8, 2004, is attached to this Award.

The transcript of the investigation held on October 1, 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:

The issue in this dispute is the alleged failure of Mr. Marusiak to properly protect his position on September 22, 2004, when he was absent without proper authority.

In our review of the transcript of the investigation held on October 1, 2004, the circumstances involved which led to Mr. Marusiak's absence on September 22, 2004, involved his wife who was pregnant and hospitalized to give birth to

their baby. Mr. Marusiak testified that his wife developed complications which required inducement on September 21, 2004.

Mr. Marusiak worked on Monday, September 20, 2004, and had requested permission to be off on Tuesday, September 21, 2004, the date of the inducement.

Mr. Marusiak testified that his wife was not released from the hospital until Thursday, September 23, 2004, which required him to stay at home on September 22, 2004, to care for his two children, ages 6 and 9. Mr. Marusiak testified that he had made arrangements with his sister to care for them on Thursday, September 23, 2004.

It is clear from the record that there were extenuating circumstances in connection with family matters that Mr. Marusiak had to deal with on September 22, 2004.

The Carrier's Attendance Policy dated January 1, 2004, Carrier Exhibit #5, provides in part that:

Rule "Q" of NIRCRC Employee Conduct Rules requires that "Employees must report at the appointed time, devote themselves exclusively to their duties, must not absent themselves, nor exchange duties with, or substitute others in their place, without proper authority."

All absences involving personal days, court appearances, family and medical leave, non-emergency medical examinations or vacations require a 48-hour advance notice to the designated supervisor. However, emergency and unforeseen events can occur.* Supervisors have, at their discretion, the authority to issue personal and vacation days without this notice. Patterns of abuse will not be tolerated.

*underscoring added

If an employee is going to be absent, for whatever reason, the employee must notify the designated supervisor prior to the start of the employees assignment. However, this notification does not automatically give an employee an authorized absence.

Mr. Marusiak was faced with an emergency and unforeseen event that justified his absence from work on September 22, 2004. Mr. Marusiak admitted that he did not call his Supervisor for permission to be off on that day. There is nothing in the record to show that there was a deliberate intent on the part of Mr. Marusiak to be absent without authority.

The discipline assessed Mr. Marusiak in this dispute was Three (3) work days deferred suspension which resulted in a Three (3) actual work days suspension being implemented because of prior discipline assessed on January 27, 2004.

In our review of the record and the circumstances involved, it is the opinion of the Board that the discipline assessed Mr. Marusiak was excessive. Accordingly, it is the decision of the Board that the appropriate measure of discipline assessed Mr. Marusiak in this dispute should be a Letter of Reprimand.

Accordingly, the Board directs that the Carrier revise Mr. Marusiak's record to reflect this decision of the Board.

AWARD:

Partially sustained in accordance with the above Findings.



Charles J. Chamberlain
Neutral Member

Date December 21, 2004

23 SEP 04 3:14 PM
--LABOR REL--
NORTHEAST ILLINOIS RAILROAD CORPORATION

Milwaukee District Engineering
2931 West Chicago Avenue, Chicago, Illinois 60622

NOTICE OF INVESTIGATION

September 22, 2004

US MAIL & CERTIFIED MAIL #7001 0360 0000 2765 8311

Mr. W. Marusiak, Machine Operator, #6608

Mr. Marusiak:

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, September 30, 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 properly protect your position as Machine Operator when you were absent without the proper authority on Wednesday, September 22, 2004.

In connection therewith you are charged with alleged violation of the following rules: **Rule Q- Metra Employee Conduct Rules** and **Engineering Department Special Instruction No. 1 Paragraph Nos. 4 & 6** concerning Metra's Engineering Department Attendance Policy.

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

G/C BMWWE-WIMMER

L/C BMWWE-KMIEC

V. L. Stoner

R. C. Schuster

W. K. Tupper

G. Washington

B. H. Smith

J. Barton

C. Cary

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

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

NOTICE OF DISCIPLINE

W. Marusiak #6608
 Employee Name

Western Avenue
 Work Location

David P. Leahy
 Supervisor assessing discipline

DATE: October 8, 2004

X FORMAL INVESTIGATION SCHEDULED FOR SEPTEMBER 30
 2004, POSTPONED AND HELD OCTOBER 1, 2004

WAIVER OF INVESTIGATION

Charge: Failure to protect your position as Machine Operator when you were absent without the proper authority on Wednesday, September 22, 2004

Rule(s) Violation: Rule Q-Metra Employee Conduct Rules and Engineering Department Special Instruction No. 1 Paragraph Nos. 4 & 6 concerning Metra's Engineering Department Attendance Policy.

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 as a result of the current Rules violation and three (3) work days actual suspension from step two (2) deferral assessed January 27, 2004 for previous Safety violation.	<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 checked="" type="checkbox"/> Your record indicates a deferred suspension of <u>3</u> day(s) was assessed on <u>January 27, 2004</u> and must be served in conjunction with discipline outlined above. As a result, suspension will begin <u>Monday, October 11, 2004</u> and end <u>Wednesday, October 13, 2004</u> . You must return to work on <u>Thursday, October 14, 2004</u> . Failure to return on that date will be treated as an unauthorized absence.	

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<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:	

12:00pm
Time8 OCT 04
Date

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

3:15pm
Time10-8-04
Date

W. Marusiak
 Charged Employee-W. Marusiak

3:25
Time10-8-04
Date

B.H.W.F.
 Union Representative

3:15pm
Time10-8-04
Date

[Signature]
 Witness

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