

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1122

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

NMB Case No. 40

This dispute involves Mr. Daniel Linstrot employed by Metra on a B&B Foreman position at Western Avenue.

On September 30, 2004, Mr. Linstrot was hand delivered a letter instructing him to attend a formal investigation on Thursday, October 7, 2004, at 9:00 a.m. for the purpose of developing the facts, determine the cause, and assess responsibility, if any, in connection with his alleged carelessness while driving a Company vehicle in the Western Avenue Coach Yard which sustained damage on September 30, 2004.

Mr. Linstrot was charged with alleged violation of Safety Rules and General Procedures Rules, Rule No. 107.2, Item no. 8 and 107.5, Item no. 1.

The Notice of Discipline letter of September 30, 2004, is attached to this Award.

At the request of the Organization, the investigation was postponed to October 15, 2004, and held on that date.

Following the investigation, Mr. Linstrot received a Notice of Discipline letter dated October 29, 2004, assessing him discipline of Five (5) work days suspension plus the deferred days from step two (2).

The Notice of Discipline letter of October 29, 2004, is attached to this Award.

The transcript of the investigation held on October 15, 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:

This dispute involves an incident that occurred at the Western Avenue Coach Yard on September 30, 2004. The police report concerning the incident indicates that the Claimant was driving a Company truck and struck a set of engine wheels as he was backing up. The police report described the damage as a small dent on the rear passenger side quarter panel. The value of the damage was listed as \$100.

To the Claimant's credit, he followed proper procedure in reporting the incident, even though, the resulting damage was very minor. The fact that he reported the incident does not, however, exonerate the Claimant on the actual charge, which was carelessness in operating a Company vehicle. The Claimant was obviously responsible for the damage to the vehicle, which would establish that he did not exercise proper care in operating the truck.

The overriding question in this Case concerns the measure of discipline. Certainly, after it was established that the Claimant was responsible in connection with the charges, the Carrier had the prerogative to impose discipline. As noted by this Board in previous disputes, however (see our Award No. 26, among others), discipline should be progressive, not punitive, and reasonably related to the seriousness of the infraction.

As noted in Award No. 26, which involved precisely the same type of incident involving minor damage to a Company vehicle, the concept of progressive discipline dictates that discipline should be commensurate with the employee's transgression. A minor incident involving negligible damage to a Company vehicle does not indicate that this was the kind of flagrant misconduct that would justify a five-day suspension.

In considering the measure of discipline in this Case, the Board also takes note of the Carrier's discipline policy, which provides that the minimum discipline when a Metra driver is at fault in a vehicle accident will be a five-day suspension. The minimum discipline provision, which was added to the policy effective January 1, 2003, was not in effect at the time of the incident addressed in Award No. 26.

As a general rule, the Board gives considerable weight to the Carrier's discipline policy in these disputes, finding that the policy adheres to the well-established principle that discipline should be corrective in nature, rather than punitive. In addition, the Board does not presume to substitute its judgment for

that of the Carrier in determining whether it was appropriate to amend the policy to address a problem with accidents involving Company vehicles.

The Board has not waived, however, and cannot waive its responsibility to determine whether the measure of discipline is commensurate with the employee's infraction. Each case must be judged on its own merits in terms of whether the application of the discipline policy was fair and reasonable considering the specific facts of the case. The Board cannot blindly defer to the Carrier in the application of the policy when it is readily apparent that the discipline does not fit the infraction.

That is particularly important when, as in this Case, the Carrier seeks to apply a "one size fits all" policy to the broad category of vehicle accidents. By their very nature, vehicle accidents can range from trifling to catastrophic, and it is vital in each case to take into account the specific circumstances in order to determine the appropriate level of discipline. It is not consistent with the principles of progressive discipline to assess the same punishment for every accident, based strictly on the determination that the employee was to some extent responsible for what occurred.

In this Case, it is apparent that the Carrier applied the discipline policy without regard for the circumstances. The Claimant was certainly responsible for the damage to the Company truck, but there is nothing in the record indicating that he was guilty of any flagrant, careless or reckless behavior that would warrant the

harsh penalty of a five-day suspension. To put it bluntly, a \$100 dent does not warrant the loss of a week's pay.

The concept of progressive discipline also takes into account an employee's record, and in this Case, we have an employee with 17 years of service and only one previous entry of discipline – a one-day deferred suspension about four years prior to the incident on September 30, 2004. The Claimant's record would indicate further that it was an abuse of the Carrier's discretion to impose a five-day suspension in this Case.

Under the circumstances, it would have been appropriate to apply the very first line in the Carrier's discipline policy, which provides that a verbal conference will be held before any formal discipline process. In minor accidents, the emphasis should be on counseling and training, not punishment. Suspensions involving the loss of time should be reserved for more serious or repeated infractions.

Accordingly, the Board directs that the discipline be removed from the Claimant's record and that he be compensated for the time lost as a result of his suspension.

SBA 1122
Awd 40

AWARD:

Sustained in accordance with the above Findings.

Charles J. Chamberlain

Charles J. Chamberlain
Neutral Member

Date December 29, 2004

NORTHEAST ILLINOIS RAILROAD CORPORATION

Milwaukee District Engineering
2931 West Chicago Avenue
Chicago, Illinois 60622

SBA 1122
Awd 40
Page 7

NOTICE OF INVESTIGATION

September 30, 2004

HAND DELIVERED

Mr. D. Linstrot, B&B Foreman, #5401

CARRIER EXHIBIT # 1

Mr. Linstrot:

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, October 7, 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 carelessness while driving a company vehicle in the Western Avenue Coach Yard which sustained damage on September 30, 2004.

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 107.5, Item no. 1.**

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-GRANIER

L/C-BMWE-PETTY

V. L. Stoner

R. C. Schuster

W. K. Tupper


G. Washington

B. H. Smith

J. Barton

C. Cary

I hereby acknowledge receipt of this letter.


Signature

9-10-1-2004
Date

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

NOTICE OF DISCIPLINE

D. Linstrot, #5401 Western Avenue David P. Leahy
Employee Name Work Location Supervisor assessing discipline

DATE: October 29, 2004

X FORMAL INVESTIGATION SCHEDULED FOR OCTOBER 7,
2004, POSTPONED AND HELD ON OCTOBER 15, 2004

WAIVER OF INVESTIGATION

Charge: Carelessness while driving a company vehicle in the Western Avenue Coach Yard which sustained damage on September 30, 2004.

Rule(s) Violation: Safety Rules and General Procedures Manual: Rule No. 107.2, Item no. 8 and 107.5, Item no. 1.

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 checked="" 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 ___ day(s) was assessed on _____ and must be served in conjunction with discipline outlined above. As a result, suspension will begin <u>November 1, 2004</u> and end <u>November 5, 2004</u> . You must return to work on <u>November 8, 2004</u> . 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 checked="" type="checkbox"/> DEVIATION FROM THE PROGRESSIVE DISCIPLINE STEPS The Chief Operations Officer has determined that the discipline of Step # <u>3</u> shall be assessed based on the circumstance in this case for the reason(s) stated below: Safety violation involving a vehicle accident. | |

11:00AM
Time

29 OCT 04
Date

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

Time

Date

Charged Employee-D. Linstrot

Time

Date

Union Representative

Time

Date

Witness

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