

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1122

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

NMB Case No. 42

This dispute involves Mr. Miguel A. Palma employed by Metra as Assistant Track Foreman at Western Avenue in Chicago, Illinois.

On October 12, 2004, Mr. Palma was hand delivered a letter instructing him to attend a formal investigation on Friday, October 15, 2004, at 1:00 p.m. for the purpose of developing the facts, determining the cause and assess responsibility, if any, in connection with his alleged unauthorized removal of a blue flag in the Western Avenue Coach Yard on October 7, 2004.

Mr. Palma was charged with alleged violation of Rule 5.13-a Paragraph 8 – Safety Rules and General Procedures Manual.

The investigation was held on October 15, 2004. Following the investigation, Mr. Palma received a Notice of Discipline letter dated November 2, 2004, assessing him discipline of Three (3) work days deferred suspension for violation of Safety Rules and General Procedures Manual: Rule 5.13-a Paragraph 8.

The Notice of Investigation letter of October 12, 2004, and Notice of Discipline letter of November 2, 2004, are 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 Employes and the Northeast Illinois Regional Commuter Railroad Corporation (Metra) dated November 12, 1999, SBA No. 1122.

FINDINGS:

Mr. James Renfrow, Director of the Milwaukee District Engineering Department, conducted the investigation held on October 15, 2004.

Mr. David Leahy, Maintenance Engineering Supervisor, Milwaukee District Engineering; Mr. John Bullock, Westline Roadmaster, Milwaukee District; Mr. John Cardelli, Mechanical Foreman, Milwaukee Road District; and Mr. Salvador Lopez, Track Inspector, appeared as witnesses for the Carrier.

Mr. Frank Kmiec, Local Chairman, and Mr. Mark Wimmer, General Chairman for the Brotherhood of Maintenance of Way Employes, represented Mr. Palma at the investigation.

In our review of the investigation transcript and the testimony of all Carrier officials who testified, it is clearly evident that an order from a top official in the Engineering Department to remove a derail in the Western Avenue Coach Yard created a situation where in the process of implementing that decision, serious disagreement between Department officials surfaced as to whether it was an

appropriate course of action. Without taking sides with those who testified as to whether it was right or wrong, it is evident that when the Claimant in following an order from his supervisor to remove the derail, found himself in the precarious position of being charged with removing it without authority and disciplined for his infraction of Carrier Rules.

This Board finds that Carrier's action in this dispute is incomprehensible and fully supports the closing statement of Mr. Mark Wimmer, General Chairman of the Brotherhood of Maintenance of Way Employees, who represented Mr. Palma where he stated in part as follows:

First of all we believe that Mr. Palma's record should be expunged of all mention of this unfortunate situation of poor communication between the mechanical department and its own employees. Mr. Palma should not be held responsible in any way for following instructions. He was carrying out his instructions. It's obvious from the testimony from the higher up engineering folks that there was a conversation between Mr. Leahy and Mr. Olsen as well as another conversation between Mr. Leahy and Mr. Clifford and attempting to dissuade the mechanical department from removing the derail. An even over Mr. Leahy's objections the mechanical department insisted that the derail be removed because of as Mr. Clifford put it safety hazards, of tripping hazards.

We think the record will speak volumes about Mr. Clifford's testimony upon questioning from the organization on the reasons for not advising his own workers that he was ordering the removal of a safety compliance from his yard that was in his jurisdiction. This entire incident could have been prevented by a simple managerial edict or directive from him to his shop employees that he had ordered the removal of a derail that was put on temporarily but instead his employees, his mechanical employees, were allowed to work in a vacuum by not knowing that someone higher up namely Mr. Clifford and Mr. Olsen had ordered the removal of a derail even over the objections of engineering management. Mr. Palma cannot be held responsible for following orders.

Accordingly, it is the decision of this Board that the Carrier rescind the discipline assessed Mr. Palma in this dispute and remove it from his record.

AWARD:

Sustained in accordance with the above Findings.

Charles J. Chamberlain

Charles J. Chamberlain
Neutral Member

Date January 14, 2005

NORTHEAST ILLINOIS RAILROAD CORPORATION

Milwaukee District Engineering
2931 West Chicago Avenue
Chicago, Illinois 60622

NOTICE OF INVESTIGATION

October 12, 2004

HAND DELIVERED

Mr. M. Palma, Track Foreman, # 8192

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 Friday, October 15, 2004, at 1:00 p.m.

The purpose for this investigation is to develop the facts, determine the cause and assess responsibility, **if any**, in connection with your alleged unauthorized removal of a blue flag in the Western Avenue Coach Yard on October 7, 2004.

In connection, therewith, you are charged with the alleged violation of the following rules: Rule 5.13-a Paragraph 8 - 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- WIMMER

L/C BMW- KMIEC

V. L. Stoner

W. K. Tupper

R. C. Schuster

G. Washington

J. Barton

B. Smith

C. Cary

D. P. Leahy--- Please arrange to appear as a company witness

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

S. Lopez--- Please arrange to appear as a company witness

A. Olsen--- Please arrange to appear as a company witness

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



James D. Renfrow, Director
Milwaukee District Engineering

PALMA1.WPD

I hereby acknowledge receipt of this letter.

Signature

Date

NORTHEAST ILLINOIS REGIONAL COMMUTER RAILROAD CORPORATION

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

NOTICE OF DISCIPLINE

M. Palma, #8192
Employee Name

Western Avenue
Work Location

David P. Leahy
Supervisor assessing discipline

DATE: November 2, 2004

X FORMAL INVESTIGATION SCHEDULED AND HELD ON
OCTOBER 15, 2004

WAIVER OF INVESTIGATION

Charge: Your unauthorized removal of a blue flag in the Western Avenue Coach Yard on October 7, 2004.

Rule(s) Violation: Safety Rules and General Procedures Manual: Rule 5.13-a Paragraph 8

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:	

1:05 PM
 Time

2 NOV 04
 Date

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

 Time

 Date

 Charged Employee-M. Palma

 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 - M. WIMMER
 LC-BMWE- F. KMIEC