

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1122

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

NMB Case No. 46

This dispute involves Mr. Walter J. Marusiak employed by Metra as a Class A Truck Driver/Machine Operator at Western Avenue.

On November 30, 2004, Mr. Marusiak was hand-delivered a letter instructing him to attend a formal investigation on December 15, 2004, for the purpose of developing the facts, determining the cause and assess responsibility, if any, in connection with his alleged carelessness while operating Metra Vehicle #90682 resulting in damage to a Toyota Corolla, Plate No. IL 5628677 on November 29, 2004.

Mr. Marusiak was charged with alleged violation of Employee Conduct Rule N, Paragraph 3, Item 1 and Safety Rule 107.5, Items 1 and 2.

At the request of the Organization, the investigation was postponed until January 4, 2005, and held on that date.

Following the investigation, Mr. Marusiak received a Notice of Discipline letter dated January 24, 2005, assessing him discipline of Five (5) work days suspension plus the deferred days from step two (2).

The transcript of the investigation held on January 4, 2005, 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 which occurred on November 29, 2004, while Mr. Marusiak was driving a Metra truck and trailer at the intersection of North Avenue and California Avenue in Chicago, Illinois.

The incident involved another vehicle a Red Toyota. Mr. Marusiak notified the Chicago police and Metra police who investigated the incident. The police report of the incident indicates that Mr. Marusiak was westbound on North Avenue, just east of California Avenue and was signaling his movement from the left lane into the right lane due to a vehicle obstructing the lane ahead. Mr. Marusiak's vehicle subsequently struck the Toyota which was westbound on California Avenue in the right lane.

Mr. Marusiak also notified his Supervisor Mr. John Bullock and was advised to come back to Western Avenue and fill out the paperwork concerning the incident after he was finished with the Chicago and Metra police at the scene of the incident.

The transcript of the investigation contains testimony of Mr. John Bullock, Mr. Marusiak's immediate Supervisor, and Mr. Marusiak, the Claimant in this dispute.

Mr. Marusiak testified that he was following two vehicles, and vehicle No.1 stopped at the intersection. Vehicle No. 2 proceeded to go around Vehicle No. 1 in the right lane and proceeded through the intersection. Mr. Marusiak was gradually making the lane change when he felt something and stopped as there was a car next to him.

Mr. Marusiak testified that he was moving slowly and had his turn signals on and had looked through his mirror and did not see the car that was involved in the incident. Mr. Saul Montoya was a passenger in the truck with Mr. Marusiak, and the police report stated that both Mr. Marusiak and Mr. Montoya advised that they both looked in the right lane for other vehicles before making their movement and saw none.

In our review of the transcript testimony of Mr. Bullock, Mr. Marusiak and the police reports of the incident, we fail to find any basis or support for the discipline assessed Mr. Marusiak in this dispute.

The incident occurred and Mr. Marusiak followed all procedures in reporting it to proper authorities.

Mr. Bullock testified that Mr. Marusiak has had no other vehicle incidents while working for the railroad. Mr. Bullock testified that Mr. Marusiak has not

been cited for any negligence or traffic violations from the Chicago Police Department.

There were no injuries that occurred in this incident. In answer to a question from the Organization Representative, Mr. Bullock stated that he knew that Mr. Marusiak did not intentionally go and get involved in an accident.

It is evident that the Carrier in this dispute has applied its "one size fits all" policy to the broad category of vehicle accidents. The Board has previously stated that we cannot and will not defer to the Carrier's application of this policy when it is readily apparent that vehicle accidents can range from trifling to catastrophic, and in each case, we must take into account the specific circumstances in order to determine whether discipline is warranted and the measure of discipline based on the circumstances before us.

In the instant dispute, we fail to find any basis for the discipline assessed Mr. Marusiak by the Carrier. Mr. Marusiak was not guilty of any flagrant careless or reckless behavior and did not violate any of the rules as charged by the Carrier. Accordingly, the Board directs that the discipline assessed Mr. Marusiak be removed from his record and that he be compensated for the time lost as a result of his suspension.

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AWARD:

Claim sustained in accordance with the above Findings.

Charles J. Chamberlain

Charles J. Chamberlain  
Neutral Member

Date February 23, 2005