

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1122

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

NMB Case No. 47

This dispute involves an incident which occurred at approximately 10:30 a.m. on Tuesday, August 2, 2005, at the 67<sup>th</sup> Street Interlocking when a ballast regulator machine entered the limits of the Interlocking Plant without proper authority. The incident was reported to Mr. Mike Stuckey, Roadmaster, who went to the site to investigate what had taken place. Mr. Stuckey arrived at the 67<sup>th</sup> Street Interlocking and found Mr. R. Hernandez, Machine Operator, in the regulator. Mr. L. Bean, Assistant Foreman, and Mr. J. Ramirez, Foreman, were in their Company vehicles on an access road. Mr. Stuckey took the three (3) individuals to the tower and requested that they each write a statement to describe what transpired.

Mr. Stuckey also requested Mr. J. Wall, the 67<sup>th</sup> Street Interlocking Operator, to provide a statement to describe his version of what transpired.

On August 11, 2005, Mr. Bean, Mr. Hernandez and Mr. Ramirez were hand-delivered a letter instructing them to attend a formal investigation on Friday, August 19, 2005, at 8:00 a.m. in the KYD Conference Room, 12301 S. Indiana Avenue, Chicago, Illinois.

The purpose of the investigation was to develop the facts, determine the cause and assess responsibility, if any, in connection with the ballast regulator entering the limits of the 67<sup>th</sup> Street Interlocking without proper authority at approximately 10:30 a.m. on Tuesday, August 2, 2005.

In connection therewith, they were charged with possible violation of Metra Maintenance of Way Rule 9.50 governing manual interlockings.

The investigation was postponed until 9:00 a.m. on Tuesday, August 30, 2005, and was held on that date.

Following the investigation, Mr. Bean was hand-delivered a Notice of Discipline letter dated September 7, 2005, assessing him discipline of fifteen (15) days suspension for violation of Metra Maintenance of Way Rule 9.50 governing manual interlockings.

The transcript of the investigation held on August 30, 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:

At the investigation held on August 30, 2005, in connection with this dispute, Mr. W.T. Archer, Director of Engineering, conducted the Hearing.

The individuals who appeared at the investigation were Mr. Stuckey, Mr. Wall, Mr. J. Law - Load Supervisor, Mr. Bean, Mr. Hernandez, and Mr. Ramirez.

Mr. F. Kmiec and Mr. T.P. Petty, Local Chairmen for the BMW, appeared as Employee Representatives.

We have reviewed the testimony of all who testified at the investigation and can find no evidence on the part of any of the employees involved to distort or alter the facts of what transpired in the incident that led to this dispute. What the record clearly shows is that the sequence of events, phone and/or radio communications between the parties involving the movement of the ballast regulator, was a classic example of mixed and confusing communication that could have led to a disastrous situation.

Mr. Bean, Assistant Foreman, was in charge of the movement of the ballast regulator from point to point. Mr. Hernandez was the Machine Operator of the ballast regulator and was responsible for its operation in performing the work that had to be done. Mr. Ramirez was the Foreman of the crew that was performing the work that was being done. Mr. Bean's responsibility was to be the look-out for the ballast regulator and control its movement through communication with the proper, appropriate parties and convey to Mr. Hernandez, the ballast regulator operator, when and where the machine should be moved.

The testimony of Mr. Bean indicates that he was talking to Randolph Control about the movement of the ballast regulator and thought he had received authority to go through the 67<sup>th</sup> Street Interlocking. Mr. Bean instructed Mr. Hernandez to proceed with the ballast machine through the 67<sup>th</sup> Street Interlocking. When Mr. Wall, the Tower Operator, noticed it going by, he flagged it down and stopped Mr. Hernandez and the machine. Mr. Wall was about to line up a train movement going from Track 1 crossing over to Track 3.

Fortunately, Mr. Hernandez, the operator of the ballast machine, noticed Mr. Wall flagging him down and stopped the machine.

As we stated previously, the incident was a classic example of rules and regulations involving the safe movement of machines or equipment being disregarded because of a complete breakdown of communication between those involved and responsible for the safe movement of such equipment in high density areas such as the Chicago area.

The record clearly shows that Mr. Bean was responsible for what transpired in the incident involved in this dispute.

The Carrier Officials are to be commended for their prompt and thorough investigation of the incident, and Mr. Archer is to be commended for a fair and impartial Hearing that he conducted to sort out the facts as to what transpired.

The Board concurs with the discipline assessed Mr. Bean in this dispute of fifteen (15) days suspension because of the serious nature of the incident.

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AWARD:

Claim denied.

Charles J. Chamberlain  
Charles J. Chamberlain  
Neutral Member

Date January 16, 2006