

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1122

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

NMB Case No. 49

This dispute involves Mr. Ivory Scott employed by Metra as a B&B Mechanic.

On December 20, 2005, Mr. Scott was sent a Certified letter instructing him to attend a formal investigation to be held in the office of the Director of Engineering, Milwaukee District, 2931 W. Chicago Ave., Chicago, Illinois, on December 29, 2005, at 9:00 a.m.

The purpose of the investigation was to develop the facts, determine the cause, and assess responsibility, if any, in connection with Mr. Scott's alleged failure to protect his position as B&B Mechanic at Franklin Park on December 20, 2005. Mr. Scott was charged with alleged violation of Carrier's Employee Conduct Rule Q and Engineering Department Special Instruction No. 1.

At the request of Mr. Tim Petty, Local Chairman – Brotherhood of Maintenance of Way Employees, the investigation was postponed until January 24, 2006, and was held on that date.

Following the investigation, Mr. Scott received a Notice of Discipline letter dated January 30, 2006, assessing him discipline of Ten (10) work days

suspension for violation of the Carrier's Rules as charged for the incident occurring on December 20, 2005.

The transcript of the investigation held on January 24, 2006, 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:

At the investigation held on January 24, 2006, Mr. James D. Renfrow, Director of Milwaukee District – Engineering, conducted the Hearing.

Mr. David Leahy, Maintenance Engineering Supervisor, and Mr. John Kostuch, Bridge and Building Foreman, appeared as witnesses for the Carrier.

Mr. Tim Petty, Local Chairman – Brotherhood of Maintenance of Way Employes, appeared as Employee Representative for Mr. Scott, the Claimant in this dispute.

Mr. Leahy testified at the Hearing on January 24, 2006, that he received a phone call from Mr. Scott at about 6:50 or 6:55 a.m. on December 20, 2005, requesting that he be permitted to go home because he was sick. Mr. Leahy testified that he gave him permission to go home but that his absence may result in an investigation.

Mr. John Kostuch, Mr. Scott's foreman, testified that Mr. Scott arrived for work at around 6:50 a.m. that day and advised Mr. Kostuch that he was ill and was experiencing a diarrhea problem. Mr. Kostuch advised Mr. Scott to call Mr. Leahy which he did and was given permission to go home.

We have reviewed the testimony of Mr. Leahy, Mr. Kostuch, and the Claimant Mr. Scott, and it is clear that the facts of the incident on December 20, 2005, are not in dispute.

Mr. Scott reported for work on the morning of December 20, 2005, before his starting time of 7:00 a.m. On arriving at work, he notified his Foreman, Mr. Kostuch, that he was ill and was advised to call Mr. Leahy for permission to go home which he did. Mr. Scott was given permission to go home but was advised by Mr. Leahy that it may result in an investigation.

We have a problem with the Carrier's action in this dispute. An employee reports for work ahead of his scheduled starting time. He advised his Foreman that he was sick and went to the bathroom because he experienced diarrhea, certainly substantiates that he was sick. The employee, Mr. Scott, goes home after obtaining approval from Mr. Leahy and is subsequently called in for an investigation that he did not protect his position on December 20, 2005.

We find nothing in the transcript that supports the Carrier's action in this dispute. The fact that Mr. Scott was out of sick days or vacation days has no bearing on the dispute. Mr. Scott was not paid for the day and did nothing to warrant the discipline assessed him of Ten (10) days suspension.

In our assessment of the facts in this Case, the Carrier's action was totally without merit.

Accordingly, it is the decision of the Board that the Letter of Discipline of Ten (10) days suspension dated January 30, 2006, be rescinded and removed from Mr. Scott's record.

Additionally, Mr. Scott should be compensated for any time that he may have lost because of the Carrier's action.

AWARD:

Claim sustained in accordance with the above Findings.

Charles J. Chamberlain

Charles J. Chamberlain

Neutral Member

Date April 19, 2006