

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1122

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

NMB Case No. 5

This case involves Mr. Jimmy Harris who is employed by Metra as B & B Foreman.

On November 3, 2000, Mr. Harris was hand-delivered a letter from Mr. J.A. Pebler, Director of Engineering, Metra Milwaukee District, instructing him to attend an investigation on November 8, 2000, for the purpose of developing the facts, determine the cause and assess responsibility, if any, in connection with alleged misconduct regarding the CP Engineering Maintenance of Way Rules Class and examination which Mr. Harris took on November 1, 2000.

Mr. Harris was charged with possible violation of Metra Employee Conduct Rule N, Para. 2, Item 4, and Metra's Maintenance of Way Rule 1.6.

The letter of November 3, 2000, is attached to this Award.

The investigation was postponed until November 13, 2000, and was held on that date.

Following the investigation, Mr. Harris received a Certified letter dated November 28, 2000, from Mr. Laurence C. Powell, Maintenance Engineering Supervisor, Milwaukee District Engineering, advising Mr. Harris that he was

dismissed from service effective November 28, 2000, for violation of Employee Conduct Rule N, paragraph 2, Item 4 and GCOR Rule 1.6.

The letter of November 28, 2000, is attached to this Award.

The transcript of the investigation held on November 13, 2000, 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 a Rules Examination Class held on November 1, 2000, for employees on General Code of Operating Rules and Canadian Pacific Rules that govern the Milwaukee District Employees.

The class was conducted by Mr. Daniel Denton, Rules Examiner.

Mr. Denton testified that he had conducted similar classes for employees on October 17, 18, and 19, 2000, and had been alerted by unnamed sources that there were probable irregularities taking place among employees taking the tests.

As a result of that information, Mr. Denton testified that he revised the tests by re-arranging the order in which the questions appeared on the examination.

The examination given on November 1, 2000, which Mr. Harris participated in, had the same questions but in the re-arranged order.

Mr. Denton testified that the revised test had 12 of the questions in the same order as previous tests.

Mr. Denton testified that Mr. Harris answered correctly 13 out of 50 questions, 12 of which were in the same order as in previous tests conducted. Mr. Harris incorrectly answered 37 questions out of 50.

Mr. Denton further testified that many of the incorrect answers were way off key and had made up answers that did not make any sense at all.

Mr. Denton testified that there were 43 employees taking the test and exam on November 1, 2000, and he, Mr. Denton, was the only person overseeing the operation. Mr. Denton testified that Mr. Harris completed the exam on November 1, 2000, in about 15 minutes.

Mr. Denton testified that a review of the results of Mr. Harris' exam raised the possibility that serious irregularities were involved.

The record in this case clearly shows that there has been evidence of irregularities taking place during rules examination classes in previous tests given by the Carrier. Several employees attested to this by signing a To Whom It May Concern letter attached to the transcript in this case. Mr. Powell, a Carrier official under cross-examination by the Union Representative, stated that he had experienced and witnessed such irregularities in prior tests which necessitated him canceling the exam he was conducting.

There is no dispute that irregularities have taken place and been observed in prior tests.

The record shows that based on the questionable practices attested to by certain named employees and unnamed eye witnesses who alerted the Carrier officials, the Carrier officials endeavored to change their procedures and the content of the test to see if there was any possibility of employees engaging in any irregularities while taking the exams.

In the instant case involving Mr. Jimmy Harris, the results of his test which is at issue and the short amount of time in completing the test could easily lead to the conclusion that there were irregularities involved even though he was not visually observed cheating and denied doing so.

We can find no fault with the Carrier's actions in this case. They made an attempt to correct a situation where procedures in giving exams were not satisfactory based on information given them by named and unnamed employees who had witnessed and observed irregularities taking place.

The instant case of Mr. Harris strongly indicates that irregularities were taking place in the exam conducted on November 1, 2000.

The record of the investigation shows that the Organization Representative injected himself into the investigation proceeding by answering questions for Mr. Harris.

Mr. Harris was perfectly capable of answering the questions posed by the Hearing Officer.

Additionally, there is no basis for the charge by the Organization that Mr. Harris was being harassed.

Mr. Harris has an employment record dating back to 1993. The employment record is favorable with the exception of four violations of rules for Absenteeism.

This leads us to the conclusion that the sequence of events in this dispute and the evidence in the record involving Mr. Harris cannot be ignored, however, the record does not warrant the discipline of permanent dismissal assessed against Mr. Harris.

It is indisputable that irregularities have been taking place in the Rules Exam process for Employees. The Carrier made an attempt to correct the problem by revising the test procedures.

The results were that Mr. Harris failed the test by missing the vast majority of the questions and finishing the test in a minimum amount of time with answers that in some instances did not reflect the knowledge and expertise of an employee with eight years of service and the most recent years of service on a highly responsible job as B & B Foreman.

It is the decision of this Board that Mr. Harris be returned to service with all seniority and all other rights unimpaired but with no pay for time lost. It is also the recommendation of this Board that Carrier and Union Representatives jointly convene and work out procedures for taking rules exams that are fair and equitable so as to avoid the possibility of improprieties in future exams such as occurred in prior exams and the instant dispute.

This Award to be complied with within thirty (30) days of the date of this Award.

AWARD:

Partially sustained in accordance with the above Findings.

Charles J. Chamberlain

Charles J. Chamberlain
Neutral Member

Date February 1, 2006

Metra Milwaukee District
2931 West Chicago Avenue
Chicago, IL 60622

November 3, 2000

HAND DELIVERED

Mr. Jimmie Harris, Jr.
9318 S. Phillips
Chicago, IL 60617

Emp. #6806

Dear Sir:

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 Avenue, Chicago, IL 60622 at 9:00 a.m., Wednesday, November 8, 2000.

The purpose of this investigation is to develop the facts, determine the cause, and assess responsibility, if any, in connection with your alleged misconduct regarding the CP Engineering Maintenance of Way Rules Class and examination which you took on November 1, 2000.

In connection therewith, you are charged with possible violation of Metra Employee Conduct Rule N, Para. 2, Item 4, and Metra's Maintenance of Way Rule 1.6.

You may be represented at the subject investigation as provided for in your labor agreement, and you will be afforded the opportunity to present evidence and testimony in your behalf and to cross examine any witnesses testifying.

Your past personal record may be reviewed at this investigation (copy attached).

Sincerely,

J. A. Pebler

J. A. Pebler
Director of Engineering
Metra Milwaukee District

Attachment

cc: V. L. Stoner G. Washington
W. K. Tupper J. Barton
R. C. Schuster H. Thomas
C. Cary J. A. Bailey
D. S. Mogan
H. J. Granier, G/C
M. A. Hozian

D. Denton - Please arrange to appear as a witness

ENCLOSURE INVESTIGATOR INV. JHJ

SBA 1122
Case 5

NORTHEAST ILLINOIS RAILROAD CORPORATION

Milwaukee District Engineering
2931 West Chicago Avenue
Chicago, Illinois, 60622

Results of Investigation

US Mail & Certified Mail

Mr. J. Harris, B&B Foreman
KYD

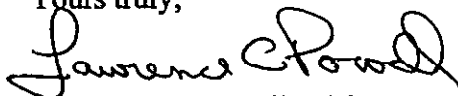
November 28, 2000

A review of the transcripts of **the investigation**, scheduled for November 8, 2000, postponed until November 13, 2000, has resulted in the following discipline being issued. This will be placed on your record as outlined in the progressive discipline policy.

RULE VIOLATIONS: Employee Conduct Rule N, paragraph 2, Item 4 and GCOR Rule 1.6

DISCIPLINE: See attached Notice of Discipline for **DISMISSAL**

Yours truly,



Lawrence C. Powell, Maintenance Engineering Supervisor
Milwaukee District Engineering
(312) 322-4118

LCP/lcp

cc: G/C-BMWE
L/C-BMWE
V. L. Stoner
W. K. Tupper
R. C. Schuster
G. Washington
H. Thomas
J. Barton
C. Cary

SB A 1122
Case 5

NORTHEAST ILLINOIS REGIONAL COMMUTER RAILROAD CORPORATION

NOTICE OF DISCIPLINE

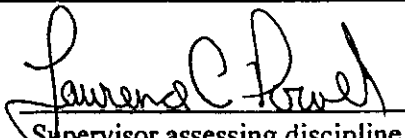
J. Harris	KYD	Lawrence C. Powell
Employee Name	Work Location	Supervisor assessing discipline

DATE: November 28, 2000

X FORMAL INVESTIGATION SCHEDULED FOR NOVEMBER 8, 2000 POSTPONED UNTIL NOVEMBER 16, 2000	WAIVER OF INVESTIGATION
--	--------------------------------

Has indicated your responsibility in connection with the violation of Metra Conduct Rule N, paragraph 2, Item 4 and GCOR Rule 1.6, when you were dishonest on November 1, 2000 at Western Ave. Therefore, you are hereby assessed the following discipline which will also be entered on your personal record:

<i>Formal</i>	<i>Waiver</i>
1. Formal Letter of Reprimand (effective for two years)	1. Formal Letter of Reprimand (effective for one year)
2. Three (3) work days deferred suspension	2. One (1) work day deferred suspension
3. Five (5) work days suspension plus the deferred days from step two (2)	3. Three (3) work days suspension plus the deferred days from step two (2)
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.	
4. Ten (10) work days suspension	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.	
X 5. Dismissal	5. Dismissal
Your employment with this Corporation is terminated effective <u>November 28, 2000</u> . You must return all company property.	

_____ Employee	_____ Union Witness	 Supervisor assessing discipline
-------------------	------------------------	--

cc: Metra Personnel