

## SPECIAL BOARD OF ADJUSTMENT NO. 1122

BROTHERHOOD OF MAINTENANCE ) OF WAY EMPLOYEES ) and ) NORTHEAST ILLINOIS REGIONAL ) COMMUTER RAILROAD CORP., ) (METRA) )	AWARD NO. 54 CASE NO. 54  Carrier File No. 8-7-546
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### STATEMENT OF CLAIM:

Appeal of Claimant J. Velez's discharge for violation of Metra Employee Conduct Rule Q, Paragraph 1; Rule N, Paragraph 3.4.4; Rule B, Paragraph 1; and Metra Safety Rules and General Procedures, Rule 1.11.

### FINDINGS:

Special Board of Adjustment No. 1122, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted, and that the Board has jurisdiction over the dispute herein.

By letter dated July 31, 2007, Claimant was notified to attend a formal investigation in connection with his alleged failure to perform his assigned janitorial duties as instructed at the Rosemont Station on the CN line on July 16, July 18, July 20 and July 24, 2007. In addition, Claimant was charged with sleeping in his vehicle on July 23, 2007 and then falsifying daily payroll forms on the aforementioned dates to indicate that his assigned duties had been completed.

After several postponements, the investigation was held on August 29, 2007. Claimant subsequently was notified that his employment was terminated effective September 11, 2007. In accordance with the Agreement, the discipline has been appealed to this Board for expedited handling.

At the time of the events giving rise to this case, the Claimant was responsible for providing daily janitorial services to stations on the North Central line. Claimant's job duties included sweeping the station platforms and emptying the trash cans. He was provided a Carrier vehicle to drive to each station. The vehicle was equipped with a GPS device which monitored the vehicle's movements.

The GPS records introduced in evidence at the investigation show the stop locations for the Claimant's vehicle and the length of time the vehicle was stopped at each location. Bridge and Building Supervisor L. Diaz testified that Rosemont is

one of the stations along the Claimant's route and it should be reflected as a daily stop location on the GPS record. However, GPS records for July 16, 18, 20 and 24, 2007 indicate that there was no stop at the Rosemont station on those dates.

The record further shows that, on those same dates, the Claimant completed work reports stating that he cleaned the stations on the North Central line. On each date, he claimed to have worked 8 hours at the regular rate of pay and one hour of overtime.

The GPS record for July 23, 2007 was also introduced in evidence at the investigation. It indicates that the Claimant arrived at the Rosemont location at 11:41 a.m., turned off the vehicle, and restarted it at 1:34 p.m. Supervisor Diaz testified that there is only one trash can at that station and it would not normally take nearly two hours for an employee to complete his assigned janitorial duties at that location. He further testified that Claimant has a paid lunch break of twenty minutes, and is expected to work through lunch.

Supervisor Station Communications M. Bevers also testified at the investigation. He stated that on July 23, 2007, he was at the Rosemont station around noon when he noticed a Carrier vehicle by the underpass. Bevers testified that he saw the Claimant in the vehicle. Although the Claimant was wearing sunglasses, it appeared to Supervisor Bevers that the Claimant was asleep because he did not move for approximately 25 minutes. Using his digital camera, Bevers took three photographs of the Claimant and provided them to his supervisor.

Claimant denied the charges and maintained that he was eating his lunch, not sleeping on the job at the time he was observed by Supervisor Bever on July 23, 2007. He also stated that he performed his assigned duties at all stations, including the Rosemont station, on the July dates in question.

The Board's role is to determine whether the Carrier's disciplinary action is supported by substantial evidence. After considering the record in its entirety, we find that Carrier's evidentiary burden has been met, notwithstanding Claimant's denial of wrongdoing. There is sufficient evidence to support the finding that the Claimant was guilty of sleeping on the job in violation of Carrier rules on July 23, 2007. In addition, the record demonstrates that he skipped the Rosemont station on four of his assigned days in July 2007, thereby failing to perform the required duties at that location.

Once that finding has been made, we next turn our attention to the penalty meted out. Generally, the Board does not substitute its judgment for the Carrier's absent a determination that the discipline was arbitrary, capricious or unreasonable.

In the instant matter, it is fundamental that sleeping on the job is viewed as a serious offense. Moreover, Carrier has the right to expect the Claimant to perform all the job duties he is assigned. As an experienced worker, he knew or reasonably should have known that he was required to perform janitorial duties at each scheduled station. Nevertheless, this case involves an employee who has worked for the Carrier for fourteen years. He has been discipline free for the past seven years. The Board finds that Carrier's action in terminating the Claimant in response to the charges was unreasonable in light of the mitigating factors present.

The Board orders that the Claimant be reinstated to service, but without backpay. The period of time that he was off shall be considered a lengthy suspension. Claimant should recognize that any further such incidents of misconduct will most assuredly lead to his discharge. However, given his years of service, the Board is of the view that progressive or corrective discipline in the form of a lengthy suspension will serve its intended purpose.

**AWARD**

Claim sustained in accordance with the Findings.

A handwritten signature in dark ink, appearing to read "Ann S. Kenis", is written over a horizontal line.

ANN S. KENIS  
Neutral Member

Dated this 21<sup>st</sup> day of January, 2008.