

SPECIAL BOARD OF ADJUSTMENT NO. 1122

BROTHERHOOD OF MAINTENANCE)		
OF WAY EMPLOYES)		
)	AWARD NO. 55
and)		CASE NO. 55
)	
NORTHEAST ILLINOIS REGIONAL)		Carrier File No. 8-7-552
COMMUTER RAILROAD CORP.,)		
(METRA))		

STATEMENT OF CLAIM:

Claimants E. Andrade, J. Salazar and J. Cruz appeal of suspension for violation of Metra Rules and General Procedures Rule 101.1 and Rule 142.6, Metra Engineering Department Special Instructions Number 6, Item 1, in connection with alleged failure to gain authority or provide protection while on a non-controlled track in Blue Island Yard, and alleged failure to wear personal protective equipment on January 8, 2008.

FINDINGS:

Special Board of Adjustment No. 1122, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employes 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.

On January 8, 2008, Safety Officer K. Kroner was at the Blue Island Yard when he observed that the Claimants' vehicle was straddling the T2 track. The yard area was flooded and the track was the only dry area. Kroner also noted that the Claimants were not wearing their personal protective equipment (PPE). The Claimants were instructed to return to the yard office.

A meeting was held at which the Claimants, Kroner, and P. Sorensen, B&B Supervisor, were present. There is a dispute as to the conversation that took place at this meeting. According to Kroner and Sorensen, the Claimants admitted they had no protection while fouling the track and further acknowledged that they knew their vehicle was on a live track. Kroner told the Claimants that he had to fail them on their efficiency test.

Each of the three Claimants testified that their vehicle was not on the T2 track and was not even fouling the track on January 8, 2008. They stated that there was standing water in the yard, and they had parked the vehicle for just a moment at a dry spot approximately 5 feet from the track to look at some material. Claimant Cruz was stationed outside the vehicle to provide protection when Safety Officer

Kroner yelled at them from a distance to get off the track. Claimants further testified that Safety Officer Kroner shouted obscenities at them when they returned to the yard office and did not permit them to present an explanation for what had occurred. With the exception of Claimant Salazar, who was wearing his protective glasses, all three employees acknowledged that they were not wearing their personal protective equipment when they stopped their vehicle in the yard.

Safety Officer Kroner reported the incident and the Claimants were removed from service. They were subsequently notified to attend an investigation in connection with the charge that they failed to gain authority or provide protection when fouling a non-controlled track in the Blue Island yard with their truck on the morning of January 8, 2008. Claimants were also charged with failing to wear personal protective equipment.

The rules in question provide as follows:

ITEM No. 1 GENERAL REQUIREMENTS

A. All Engineering Department Personnel are required to wear hard hats and safety glasses during their entire tour of duty, unless they are riding in a vehicle or in an office environment.

B. All Engineering Department Personnel are required to wear an orange-reflectORIZED safety vest (or other protective equipment as designated by special instruction) at all times while:

- a. On or about the track area,
- b. In the presence of vehicular traffic,
- c. Any time visibility may necessitate additional protection.

RULE 142.6 OCCUPYING OR FOULING NON-CONTROLLED TRACKS

Ensure that authority or protection is provided before you occupy or foul non-controlled tracks in the following situations:

- Equipment is on or fouling the track, or
- Work is being performed on or foul of the track.

EXCEPTION: A lone worker or employees protected by a lookout may perform routine inspection or minor work as outlined under Rule 142.7, Using Lookouts, or Rule 142.9, Working as a Lone Worker.

RULE 101 PERSONAL PROTECTIVE EQUIPMENT (PPE)

101.1 WHO SHOULD WEAR PPE

- 1. All employees must wear PPE while on Metra property, in Metra vehicles, or when required by their supervisor, their location, or the work being done...**

Following the investigation, held February 13, 2008, the Claimants were each issued a five (5) day suspension. In accordance with the Agreement, the discipline has been appealed to this Board for expedited handling.

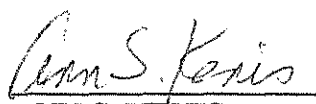
The Board has carefully reviewed the record in its entirety. We note that the issues in this case center on credibility and the reasonableness of the penalty imposed. It is readily apparent from the transcript of the investigation that there is a divergence in the testimony between the Carrier witnesses and the Claimants as to what occurred on January 8, 2008.

When examining conflicts in the testimony, however, it is not our role to issue fact findings or resolve conflicting testimony. That is the role of the hearing officer. The Board's function is a limited one – appellate in nature. We do not disturb the findings of the trier of fact. Our task is to review the record developed by the parties on the property to determine whether substantial evidence exists to support the Carrier's disciplinary action and to ensure that Carrier's decision was not unreasonable under all the relevant circumstances.

Application of the foregoing principles leads us to conclude that there is no proper basis for disturbing the Carrier's disciplinary action. We find that there is substantial evidence to support the conclusion that the Claimants violated the rules as charged, notwithstanding the witnesses' conflicting testimony. Moreover, while the Claimants have good work records, their actions were a breach of rules that are in place to ensure safe operating procedures. The penalty imposed was not unreasonable, arbitrary or capricious under the circumstances. Accordingly, the claim must be denied.

AWARD

Claim denied.


ANN S. KENIS
Neutral Member

Dated this 16th day of May, 2008.