

SPECIAL BOARD OF ADJUSTMENT NO. 1122

**BROTHERHOOD OF MAINTENANCE)
OF WAY EMPLOYEES)
)
and)
)
NORTHEAST ILLINOIS REGIONAL)
COMMUTER RAILROAD - METRA)**

**AWARD NO. 57
CASE NO. 57**

STATEMENT OF CLAIM:

Claim on behalf of D. Westbrook, B&B Mechanic, for expungement of discipline assessed, payment for all time lost, and reimbursement for benefits lost during time withheld from service.

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 the Board has jurisdiction over the dispute herein.

The facts of this case are not in dispute. On August 13, 2008, the Claimant hurt his shoulder when he lifted a water cooler about three and one-half feet and loaded it onto the flatbed of a gang truck. The water cooler weighed approximately 60 pounds. The Grievant admittedly did not use the lift gate on the truck to load the cooler nor did he request assistance from fellow employees.

The Claimant lost no work time as a result of the incident and has made no claim against the Carrier for a work-related injury.

On August 14, 2008, the Claimant was directed to attend a hearing in connection with the following charges:

...your alleged failure to protect yourself from injury when you allegedly failed to use the lift gate on truck #91237 or ask for assistance from co-workers while attempting to load a water cooler onto the bed of unit #91237. In connection therewith, you are hereby charged with alleged violation of Metra Employee conduct Rule "N" Paragraph #3, Item #1, Metra Safety Rule 100.1, Paragraph #2, Item #1 and Metra Safety Rule #100.12, Item #5...

The hearing was held on September 16, 2008, after which time the Carrier determined that the Claimant was guilty of the charges. Claimant was issued a ten-day actual suspension. The propriety of the discipline now comes before the Board for resolution.

The safety rules relied upon by the Carrier read as follows:

METRA RULES, EMPLOYEE CONDUCT RULE N

Employees must not be:

- 1) Careless of themselves and others.

METRA SAFETY RULE 100.1 – SAFETY RESPONSIBILITIES OF EMPLOYEES

...These safety rules are basic guidelines to protect your health and safety. These rules cannot cover every possible work situation. You are the only person who can guarantee that you will perform your work safely. While on duty:

- Protect yourself.

METRA SAFETY RULE 100.12 – LIFTING AND CARRYING

5. When possible, use mechanical equipment for heavy lifting. If mechanical equipment is not available, have other employees help lift.

We have carefully reviewed the record in its entirety. The evidence shows that workers on this gang routinely pick up and haul objects onto the truck that weigh approximately 60 pounds or more. Among the items are tools, bags of salt, bags of cement, and water chests. Claimant's supervisor, B&B Foreman Rodney Carter, conceded that the employees had not previously been instructed to seek assistance from co-workers or to use the lift gate on the truck to carry out these duties. He even acknowledged that the lift gate was not used when two dozen salt bags at a time were loaded onto the truck. As Foreman Carter stated: "...I mean, we lift things all the time...I thought it was safe....we have done it in the past." Similarly, B&B Supervisor Jerry Bailey testified that he has carried water coolers on occasion. Neither supervisor informed employees at safety briefings that lifting techniques had to be changed so as to be in compliance with Carrier safety rules.

Given this state of the record, the Board finds that just cause does not exist for discipline. There is no doubt that the Carrier has the right and the obligation to maintain a safe working environment. Safety rules are designed for the protection of employees and the public and are entitled to enforcement. However, when Carrier chooses to apply a rule in a manner different than before, and to the point of meeting a violation with discipline, employees must be forewarned. In the instant case, *it is clear that employees had not been notified of the necessity of using the lift*

gate or seeking assistance when hauling objects, nor were they informed that failure to do so would result in discipline. Just cause dictates that changes in the application of the safety rules be accompanied by notice to employees and an educational process before imposing discipline. Those requirements are lacking on this record.

Claimant was performing his duties, just as he did on a daily basis, and in a manner known to supervision. The fact that a minor injury occurred during the Carrier-accepted method of loading the water cooler does not establish that discipline was warranted. Accordingly, the claim must be sustained in its entirety.

AWARD

Claim sustained.


ANN S. KENIS
Neutral Member

Dated this 12th day of December, 2008.