

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1122

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

NMB Case No. 7

This case involves Mr. Tommy L. Hubbard who is employed by Metra as B & B Mechanic.

On November 3, 2000, Mr. Hubbard was hand-delivered a letter from Mr. John 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. Hubbard took on November 1, 2000.

Mr. Hubbard was charged with possible violation of 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 16, 2000, but by mutual agreement between the parties the investigation was held on November 13, 2000.

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

been 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, at KYD and two classes on the Milwaukee District on October 25 and 26, 2000.

Mr. Hubbard took a Rules Exam on October 26, 2000, and missed 18 questions out of 50, failing the exam.

Mr. Hubbard took the test again on November 1, 2000, and missed 35 out of 50 questions.

Mr. Denton testified that the questions on the tests given on October 26, 2000, and November 1, 2000, were the same but the questions on the November 1, 2000, test were re-arranged in different order.

Mr. Denton testified that after reviewing the results of the exam taken by Mr. Hubbard, there was evidence of serious irregularities.

In this dispute as in NMB Case 5 and NMB Case 6, the incident giving rise to the disputes was the Rules Examination given on November 1, 2000, to 43 employees.

The facts in each case are identical, the only difference being the individuals involved who are the subject of their respect investigations.

The thrust of the defense presented by the Organization in this dispute as in Cases NMB 5 and 6 is two fold, first irregularities have happened before and nothing was done about it.

Second, the examiner did not visibly witness any cheating and accordingly no one is guilty. We have serious problems with those conclusions. The fact that irregularities occurring in Rules Exams over the past several months somehow makes it OK and precludes the Carrier from making an effort to correct the situation as in the instant case before us cannot be accepted.

In this case as in NMB Cases 5 and 6, the striking similarities as to the results of the tests of the individuals involved lead to the logical conclusion that the irregularities did occur and not by chance.

The other disturbing fact brought out by the transcript testimony is the action on the part of the Organization Representative to answer all questions posed to Mr. Hubbard, the employee charged.

Mr. Hubbard has an employment record dating back to 1988. The record is clean and contains no disciplinary action in all of those years. The record shows that Mr. Hubbard has held many responsible positions and during that period of time must have displayed the ability to communicate with others in the performance of his duties on all of the positions which he has held since being employed. Additionally, the transcript record contains no explanation by the Organization Representative as to why Mr. Hubbard was not permitted to speak for himself at the investigation.

A disturbing comment made by the Organization Representative in his closing statement to the effect that the people being scrutinized here are people of color.

There is no basis or support for that comment in the record, and we do not consider it appropriate.

The issue in this dispute is the Rules Exam given on November 1, 2000, and the proceedings and the exam that was given by the Carrier on that date and the results of those exams of the individuals under investigation. The evidence clearly points out that irregularities did occur.

The Carrier to its credit made an attempt to correct a problem that had existed for some time. In this case, Mr. Hubbard failed the test in a manner that

was certainly questionable of an individual who has held a responsible position for over 12 years.

The evidence in this dispute cannot be ignored, however, the discipline of permanent dismissal of Mr. Hubbard is not warranted based on the facts in the record.

Accordingly, it is the decision of this Board that Mr. Hubbard 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 the Carrier and Organization Representatives jointly convene and work out procedures for taking Rules Exams in the future that are fair and equitable so as to avoid any possibility that irregularities can occur.

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  
Neutral Member

Date February 5, 2001

SBA 1122

Case 7

EXHIBIT

#1

Metra Milwaukee District  
2931 West Chicago Avenue  
Chicago, IL 60622

November 3, 2000

HAND DELIVERED

Mr. Tommy L. Hubbard  
5616 S. Perry  
Chicago, IL 60621

Emp. #5642

ACKNOWLEDGEMENT:

Tommy Hubbard  
Signature

11-6-00  
Date

Jay [Signature]  
Witness

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 10:00 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,

John 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                              D. Nys  
D. S. Mogan  
H. J. Granier, G/C  
M. A. Hozian

D. Denton - Please arrange to appear as a witness

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## **NORTHEAST ILLINOIS RAILROAD CORPORATION**

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

### **Results of Investigation**

**US Mail & Certified Mail**

Mr. T. Hubbard, B&B Mechanic  
Western Ave.

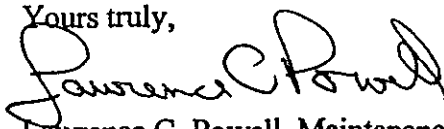
November 28, 2000

A review of the transcripts of the investigation, scheduled for November 8, 2000, postponed until November 16, 2000 and held on November 13, 2000 by the request of the Local Chairman Mr. Petty, 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

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NORTHEAST ILLINOIS REGIONAL COMMUTER RAILROAD CORPORATION

NOTICE OF DISCIPLINE

T. Hubbard	Western Ave	Lawrence C. Powell
Employee Name	Work Location	Supervisor assessing discipline

DATE: November 28, 2000

☒ **FORMAL INVESTIGATION**  
**SCHEDULED FOR NOVEMBER 8, 2000**  
**POSTPONED UNTIL NOVEMBER 16, 2000**  
**HELD BY REQUEST ON NOVEMBER 13, 2000**

**WAIVER OF INVESTIGATION**

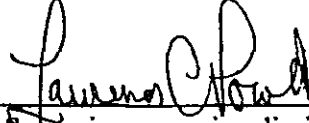
Has indicated your responsibility in connection with the violation of Metra Conduct Rule N, paragraph 2, Item 4 and GCOR Rule 1.6, when you were dishonest on November 1, 2000 at Western Ave. Therefore, you are hereby assessed the following discipline which will also be entered on your personal record:

<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)
<p>Your record indicates a deferred suspension of ___ day(s) was assessed on _____ and must be served in conjunction with discipline outlined above.</p> <p>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.</p>	
4. Ten (10) work days suspension	4. Seven (7) work days suspension
<p>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.</p>	
<input checked="" type="checkbox"/> 5. Dismissal	5. Dismissal
<p>Your employment with this Corporation is terminated effective <u>November 28, 2000</u>. You must return all company property.</p>	

cc: Metra Personnel

Employee

Union Witness

  
 Supervisor assessing discipline