

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1122

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

NMB Case No. 9

This case involves Mr. Odilon Villagomez who is employed by Metra as a Trackman/Driver. Mr. Villagomez's work location was at Metra Electric 12th Street

Mr. Villagomez was sent a certified letter dated September 20, 2001, instructing him to attend a joint formal investigation on Friday, September 28, 2001, for the purpose of developing the facts, determine the cause and assess responsibility, if any, in connection with his alleged involvement in an accident with Metra Vehicle #LO762 at 74th Street on the Southwest Service District on Sunday, September 16, 2001.

Mr. Villagomez was charged with alleged violation of Metra Employee Conduct Rules "L", Paragraph 1, "N", Paragraph 3, Items 1 and 2 and Safety Rule 107.10. Item 4.

The letter of September 20, 2001, to Mr. Villagomez is attached to this Award. Mr. Jorge A. Carbajal, Trackman for Metra also received a letter dated September 20, 2001, which is attached to this Award.

Following the investigation, Mr. Villagomez received a letter dated October 17, 2001, advising that he had been assessed discipline of five (5) work days actual suspension for violation of Metra Employee Conduct Rules "L", Paragraph 1, "N", Paragraph 3, Items 1 and 2 and Safety Rules 107.10, Item 4.

The letter of October 17, 2001, is attached to this Award.

The transcript of the investigation held on September 28, 2001, 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:

The transcript in this dispute reveals that Mr. Odilon Villagomez and Mr. Jorge Carbajal received individual letters requesting them to appear at a joint investigation on September 28, 2001, to develop facts and assess responsibility, if any, in connection with the incident that occurred on September 16, 2001, involving Metra Vehicle #LO762 at 74th Street on the Southwest Service District.

The record reveals that Mr. Villagomez was the driver of the truck at the time of the incident.

In our review of the investigation transcript, it is noted that despite the fact that it was a joint investigation, the Hearing Officer did not allow Mr. Carbajal to stay in the investigation room when Mr. Villagomez was testifying.

We have a problem with that procedure.

Mr. Alan Scott, the Organization's Representative, objected but was overruled by the Hearing Officer, Mr. Moses Richardson.

Mr. Scott's objection was a valid one and should have been sustained by the Hearing Officer.

The investigation was a joint investigation involving two named employees. Both employees had the right to be present during the entire proceeding.

Accordingly, because of the procedural defect, it is our decision that the five (5) work day suspension be rescinded and Mr. Villagomez be compensated for any lost time.

AWARD:

Claim sustained.

Charles J. Chamberlain

Charles J. Chamberlain
Neutral Member

Date December 17 2001



NOTICE OF INVESTIGATION

September 20, 2001

US MAIL AND CERTIFIED MAIL #P 568 453 324

Mr. Odilon Villagomez
4111 S. Rockwell
Chicago, IL 60632

Dear Mr. Villagomez:

You are hereby instructed to **attend** a joint formal investigation which will be held on Friday, September 28, 2001 at 9:00 a.m. in the Office of Director of Engineering, 2067 West 123rd Street, Blue Island, Illinois 60406.

The purpose of this investigation is to develop the facts, determine the **cause** and **assess** responsibility, if any, in connection with your alleged involvement in an accident with Metra Vehicle #L0762 at 74th Street on the Southwest Service District on Sunday, **September 16**, 2001. Therefore, you are hereby charged with alleged violation of Metra Employee Conduct Rules "L", Paragraph #1, 'N', Paragraph #3, Items #1 and #2 and Safety Rule 107.10, Item #4. **Your** past work record, a copy of which is attached, will be reviewed at this investigation.

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.

Sincerely,

M. Richardson
Director
Rock Island Engineering

MR/dm

cc: V. L. stoner
W. K. Tupper
G. Washington
-LADDER REL- H. Thomas

J. Barton
C. Cary
1 SEP 01 12 52 M. S. Wimmer, G/C
A. Scott, L/C
R. L. Gage - Please appear as **Corporate** Witness
T. R. Ross Please appear as **Corporate** Witness

I hereby acknowledge receipt of the original of this letter

Signed _____

Date _____

THIS receipt is

FILE COPY

SBA 1122
Awd 9

Metra

NOTICE OF INVESTIGATION

September 20, 2001

US MAIL AND CERTIFIED MAIL #P 568 453 325

Mr. Jorge A. Carbajal
411 W. 150th Street
Harvey, IL 60426

Dear Mr. Carbajal:

You are hereby instructed to attend a joint formal investigation which will be held on Friday, September 28, 2001 at 9:00 a.m. in the Office of Director of Engineering, 2067 West 123rd Street, Blue Island; Illinois 60406.

The purpose of this investigation is to develop the facts, determine the cause and assess responsibility, if any, in connection with your alleged involvement in an accident with Metra Vehicle #LO762 at 74th Street on the Southwest Service District on Sunday, September 16, 2001. Therefore, you are hereby charged with alleged violation of Metra Employee Conduct Rules "L", Paragraph #1, "N", Paragraph #3, Items #1 and #2 and Safety Rule 107.10, Item #4. Your past work record, a copy of which is attached, will be reviewed at this investigation.

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.

Sincerely,



M. Richardson
Director
Rock Island Engineering

MR/dm

cc: v. L. stoner
W. K. Tupper
G. Washington
H. Thomas
J. Barton
c. Cary
M. S. Wimmer, G/C
A. Scott, L/C
R. L. Gage - Please appear as Corporate Witness
T. R. Ross - Please appear as Corporate Witness

I hereby acknowledge receipt of the original of this letter.

Signed

Date

SB

SBA1122
Awd 9

NORTHEAST ILLINOIS COMMUTER RAILROAD CORPORATION
NOTICE OF DISCIPLINE

Name & address of supervisor assessing discipline:

--LABOR REL--

13 OCT 01 11:24

W.K. Tupper
Chief Engineering Officer
547 W. Jackson Boulevard
Chicago, Illinois 60661

October 17, 2001

Mr. Odilon Villagomez
4111 S. Rockwell
Chicago, IL 60632

The result of the investigation of September 28, 2001, has revealed your responsibility in connection with the violation of Metra Employee Conduct Rules "L", Paragraph 1, "N", Paragraph 3, Items 1 and 2 and Safety Rule 107.10, Item 4. Therefore you are hereby assessed the following discipline which will also be entered on your personal record:

- () 1. Formal reprimand (letter of particular attached).
- () 2. Three (3) days deferred suspension (with waiver one (1) day deferred) which will remain in effect for two (2) years and must be served as actual suspension if additional discipline is assessed during those years.
- (X) 3. Five (5) work days actual suspension (with waiver three (3) days plus deferred from Step 2 and EAP interview).**
- (X) 3a. Your record indicates a deferred suspension of 0 days which was assessed on _____ and must be served in conjunction with discipline outlined above.**

Suspension will begin Thursday, October 18, 2001 and end Wednesday, October 24, 2001. You must return to work on Thursday, October 25, 2001. Failure to return to work on that date will be treated as an unauthorized absence.

- () 4. Ten (10) work days actual suspension (with waiver seven (7) days).

Suspension will begin _____ and end _____
You must return to work on _____ Failure to
return to work on that date will be treated as an unauthorized absence.

- () 5. Dismissal.

W.K. Tupper CEO
Signature & Title of Supervisor assessing discipline