

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1122

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

NMB Case No. 1

This case involves Mr. Omwah D. Sneed who is employed by Metra as a Trackman.

On October 15, 1998, Mr. Sneed was assigned to a Capital Gang at 47th Street under the supervision of Mr. Steve Saale, Capital Gang Foreman.

The work assignment for the Capital Gang on October 15, 1998, consisted of building new track between 71st and 72nd Street.

Mr. Sneed's assignment was to move cross ties that were in a certain pile. Mr. Sneed was working with a co-worker Mr. Dennis Sibit.

In the process of moving the cross ties, Foreman Saale observed Mr. Sneed moving ties off of the pile by hand. Mr. Sibit was using a pair of single tie tongs.

Foreman Saale instructed Mr. Sneed to use tie tongs to move the ties.

Mr. Sneed started to use the tie tongs as instructed by Foreman Saale.

Foreman Saale testified that he observed Mr. Sneed using the tie tongs.

Mr. Sneed after working with the tie tongs for a period of time threw the tie tongs down and moved one or two ties by hand.

Foreman Saale testified that after he observed Mr. Sneed put the tie tongs down, he walked away and had no further conversation with Mr. Sneed.

Mr. Sneed testified that he threw the tie tongs down because he felt he had hurt himself while moving ties with the tie tongs.

Mr. Sneed immediately reported his injury to Foreman Saale who had left the scene of the incident and was taken to a contractor's office that had a first aid kit.

The record contains an injury report that was completed on October 16, 1998.

On October 16, 1998, Mr. Sneed received a letter hand delivered instructing him to attend a formal investigation on October 23, 1998, at 10:00 a.m. in the Office of the Director of Engineering, 2067 West 123rd Street, Blue Island, Illinois.

The letter read as follows:

October 16, 1998

HAND DELIVERED

Mr. Omwah D. Sneed
7719 N. Hermitage
Chicago, IL 60626

Dear Mr. Sneed:

You are hereby instructed to attend a formal investigation which will be held on Friday, October 23, 1998 at 10:00 a.m. in the Office of Director of Engineering, 2067 W. 123rd Street, Blue Island, Illinois.

The purpose of this investigation is to develop the facts, determine the cause and access responsibility, if any, in connection with your alleged failure to follow instructions and injuring yourself while distributing cross ties in the vicinity of 71st Street on Thursday, October 15, 1998. Therefore you are hereby charged with alleged violation of Metra Employee Conduct Rule "N", Paragraph #3, Items #1, #2 and #3. 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.

M. Richardson
Director
Rock Island District

MR/dm

The investigation was held on October 23, 1998, as scheduled.

Following the investigation, Mr. Sneed received a letter dated November 10, 1998, dismissing him from service effective November 10, 1998.

The letter read as follows:

November 10, 1998

Name and address of supervisor assessing discipline

William K. Tupper
Chief Engineering Officer
547 W. Jackson
Chicago, IL 60661

Mr. Omwah D. Sneed
7719 N. Hermitage
Chicago, IL 60626

Investigation of October 23, 1998 has revealed your responsibility in connection with the violation of Metra Employee Conduct Rule "N", Paragraph #3, Items #1, #2 and #3. Therefore, you are hereby assessed the following discipline which will also be entered on your personal record:

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

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.

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

Suspension will begin _____ and end _____. You must return to work on _____.
- (X) 5. Dismissal. Your employment relationship with this Corporation is terminated and your record closed effective November 10, 1998. You must immediately return all company property to Moses Richardson, Rock Island District, 2067 W. 123rd Street, Blue Island, IL.

Signature and Title of Supervisor
assessing discipline

The transcript of the investigation held on October 23, 1998, 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:

In our review of the transcript in this dispute, the work being performed by Mr. Sneed under the supervision of Foreman Saale involved the moving of cross ties from a pile. This type of work is routine with Maintenance of Way employees.

The use of tie tongs is one of many ways that are used by employees to move cross ties.

Mr. Sneed was observed by Foreman Saale using his hands to remove ties from the pile.

Mr. Sneed was instructed by Foreman Saale to use tie tongs to move the ties.

Foreman Saale testified that he observed Mr. Sneed picking up the tie tongs and he used them as instructed. After moving some ties with the tie tongs, Foreman Saale testified that he threw them down and started lifting them by hand. At that point Foreman Saale testified that he walked away from him.

Mr. Sneed testified that he used the tie tongs as instructed by Foreman Saale and in the process of moving a tie, he felt that he had injured himself at which point he threw the tie tongs down. Mr. Sneed testified that on examination of himself, he determined that he had injured himself and immediately sought out Foreman Saale to report the injury.

Mr. Sneed did as he was told and in the process of using the tie tongs he sustained an injury. There is no evidence to support an insubordination charge. There is no evidence in the record that shows Mr. Sneed was negligent or careless in performing the work on the day of the incident.

We question the actions of Foreman Saale in walking away from a location, if as alleged, employees under his jurisdiction or supervision were performing their work in a negligent or careless manner.

The procedures of using both tie tongs and by hand are common practice in performing the work of moving cross ties.

Foreman Saale confirmed the practice in responding to a question from Mr. Emanuel Turner, the Union Representative, as to whether there has been a time in his career as to the need to use your hands instead of tie tongs.

Foreman Saale responded to the question with the answer "Yes, Sir."

Our review of the transcript in this dispute does not reveal any evidence of insubordination, negligence or carelessness on the part of Mr. Sneed on the day of the incident.

Based on the record before us, we find it difficult to comprehend why any discipline was assessed against Mr. Sneed.

The discipline of dismissal, in our judgment, reflects an unreasonable action by the Carrier.

Accordingly, it is the decision of this Board that Mr. Sneed be returned to service immediately with seniority and all other rights unimpaired and Mr. Sneed be compensated for all time lost.

AWARD:

Claim sustained. This Award to be complied with within thirty (30) days of the date of this Award.

Charles J. Chamberlain

Charles J. Chamberlain
Neutral Member

Date April 18, 2000