

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1122

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

NMB Case No. 15

This dispute involves Mr. Marchand Mailey employed by Metra as a B&B Mechanic.

On October 8, 2001, Mr. Mailey was hand-delivered a letter addressed to him instructing him to attend an investigation on Friday, October 12, 2001, at 9:00 a.m. for the purpose of developing facts, determining the cause and assess responsibility, if any, in connection with his alleged failure to protect his position as B&B Mechanic on Friday, October 5, 2001.

Mr. Mailey was charged with alleged violation of Metra Employee Conduct Rule Q and Engineering Department Special Instruction No. 1 concerning Metra's Engineering Department Attendance Policy.

The letter of October 8, 2001, is attached to this Award.

The investigation was postponed and held on October 22, 2001.

Following the investigation, Mr. Mailey received a Notice of Discipline letter dated November 9, 2001, assessing discipline of Five (5) work days suspension plus the one(1) work day deferred suspension that was assessed on October 3, 2001, for a total of six (6) work days suspension.

The Notice of Discipline letter of November 9, 2001, is attached to this Award.

The transcript of the investigation held on October 22, 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 Employes and the Northeast Illinois Regional Commuter Railroad Corporation (Metra) dated November 12, 1999. SBA No. 1122.

FINDINGS:

The charge in this dispute is the alleged failure of Mr. Mailey to protect his assignment as B&B Mechanic on October 5, 2001.

The investigation transcript reveals that Mr. Mailey was on his way to work and experienced problems with his car, which necessitated him pulling off the expressway and calling for roadside assistance from the Chicago Motor Club. Mr. Mailey called Mr. Larry Powell General B&B Supervisor, Capital and informed Mr. Powell of the problem. Mr. Mailey's call to Mr. Powell was made before 7:00 a.m. his assigned starting time on October 5, 2001.

At the investigation, Mr. Powell testified that Mr. Mailey did in fact call Mr. Powell about the car problem he was experiencing and the call was received before 7:00 a.m. Mr. Powell further testified that "He had previously called in for car problems before and I told him at that time that it wasn't Metra's responsibility

to provide the decent transportation to and from work, it's the employee's responsibility to provide transportation to get to work on time. And at that time previously I said I wasn't going to be accepting that as an excuse any more. And when he called in that morning, I told him I wasn't going to accept that as an excuse."

Mr. Mailey also testified that after calling Mr. Powell, he called Bernie Neal at Franklin Park.

Mr. Mailey testified that after making the two phone calls to Mr. Powell and Mr. Neal, he then called the Chicago Motor Club for assistance.

In our review of the very brief transcript of the hearing, which lasted 20 minutes, we have a problem with Mr. Powell's testimony in failing to specify how many times Mr. Mailey had "previously" called in and was absent for car problems. Mr. Mailey's personal work record indicates that he was disciplined on September 26, 2001, at which time he waived investigation and accepted one (1) work day deferred suspension.

On October 5, 2001, the date involved in this dispute, we find it difficult to comprehend why Mr. Powell was so adamant and firm on receiving the call from Mr. Mailey to not accept his explanation as to why he could not make it to work. The investigation was called for by the Carrier and in developing the facts, which took about 20 minutes, it appears in our judgment that after hearing the facts concerning Mr. Mailey's car problem on October 5, 2001, which were verified by documents produced by Mr. Mailey and the Organization, there was certainly

justification for accepting Mr. Mailey's account of what transpired without disciplinary action. In our judgment, based on the record before us there is no evidence of chronic or unexplained absenteeism. There is no evidence that Mr. Mailey's absence for one day caused any problems for the Carrier's operation.

Based on the record before us, it is our opinion that the discipline assessed Mr. Mailey of Five (5) work days suspension plus the one (1) work day from Step 2 in the Carrier's discipline policy is unreasonable and not warranted. Accordingly, it is our decision that the Notice of Discipline letter of November 9, 2001, to Mr. Mailey be rescinded and removed from his record. Mr. Mailey is to be compensated for the time lost which was six (6) work days.

AWARD:

Claim sustained.

Charles J. Chamberlain

Charles J. Chamberlain

Neutral Member

Date February 11, 2002

NORTHEAST ILLINOIS RAILROAD CORPORATION

Milwaukee District Engineering
2931 West Chicago Avenue
Chicago, Illinois 60622

NOTICE OF INVESTIGATION

October 8, 2001

HAND DELIVERED

Mr. M. Mailey, B&B Mechanic, #7923

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 Ave, Chicago, Illinois 60622, Friday, October 12, 2001 at 9:00 A.M.

The purpose for this investigation is to develop the facts, determine the cause and assess responsibility, if any, in connection with your alleged failure to protect your position as B&B Mechanic on Friday, October 5, 2001.

In connection therewith you are charged with alleged violation of the following Metra Employee Conduct Rule, **Rule Q**. "Employees must report at the appointed time, devote themselves exclusively to their duties, must not absent themselves, nor exchange duties with, or substitute others in their place, without proper authority." And **Engineering Department Special Instruction No. 1** concerning Metra's Engineering Department Attendance Policy.

Your personal work record will be reviewed at this investigation. (Copy attached)

You may be represented at this investigation as provided for in your labor agreement. Your representative will be given the opportunity to present evidence and testimony in your behalf and to cross-examine any witnesses testifying against you.

G/C BMWE-Granier
L/C BMWE-Hozian
V. L. Stoner
W. K. Tupper
R. C. Schuster
G. Washington
H. Thomas
J. Barton
C. Cary
L. Powell--- Please arrange to appear as a company witness



John A. Pebler, Director
Milwaukee District Engineering

NORTHEAST ILLINOIS RAILROAD CORPORATION

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

Results of Investigation

Hand Delivered

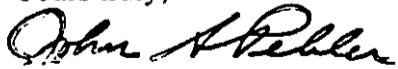
Mr. M. Mailey, B&B Mechanic, #7923

November 9, 2001

A review of the transcripts of the investigation, scheduled for October 12, 2001 and postponed and held on October 22, 2001, has resulted in the following discipline being issued: Five (5) work days suspension plus the one (1) work day deferred suspension that was assessed on October 3, 2001 for a total of six (6) work days suspension to be served as outlined in the attached notice of discipline.

The assessment of the above discipline will be placed on your record as outlined in the progressive discipline policy.

Yours truly,



John A. Pebler, Director
Milwaukee District Engineering
(312) 322-4101

JAP/lcp

cc: G/C-BMWE-Granier
L/C-BMWE-Hooker
V. L. Stoner
W. K. Tupper
R. C. Schuster
G. Washington
H. Thomas
J. Barton
C. Cary

NORTHEAST ILLINOIS REGIONAL COMMUTER RAILROAD CORPORATION

NOTICE OF DISCIPLINE

M. Mailey, #7923 Employee Name	Western Avenue Work Location	John A. Pebler Supervisor assessing discipline
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DATE: November 9, 2001

**X FORMAL INVESTIGATION
SCHEDULED FOR OCTOBER 12, 2001,
POSTPONED AND HELD ON
OCTOBER 22, 2001**

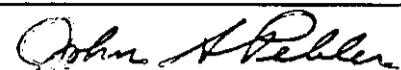
**WAIVER OF INVESTIGATION
SCHEDULED FOR OCTOBER 4, 2001**

Has indicated your responsibility in connection with the violation of Metra Employee Conduct Rules: **Rule Q and Engineering Department Special Instruction Number 1**, when you failed to protect your position as B&B Mechanic on Friday, October 5, 2001. 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
X 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)
Your record indicates a deferred suspension of <u>1</u> day(s) was assessed on <u>October 3, 2001</u> and must be served in conjunction with discipline outlined above.	
As a result, suspension will begin <u>November 12, 2001</u> and end <u>November 19, 2001</u> . You must return to work on <u>November 20, 2001</u> . Failure to return on that date will be treated as an unauthorized absence.	
4. Ten (10) work days suspension	4. Seven (7) work days suspension
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.	
5. Dismissal	5. Dismissal
Your employment with this Corporation is terminated effective _____. You must return all company property.	

Employee	Union Witness	Supervisor assessing discipline
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cc: Metra Personnel



Supervisor assessing discipline