

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1122

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

NMB Case No. 16

This dispute involves Mr. Roberto Camargo employed by Metra as a Machine Operator.

Mr. Camargo was sent a First Class Mail & Certified Mail letter dated November 7, 2001, instructing him to attend a formal investigation on Wednesday, November 14, 2001, for the purpose of developing the facts, determine the cause and assess responsibility, if any, in connection with his alleged failure to operate the regulator in a safe manner on October 31, 2001, when he allegedly proceeded over a switch when it was not in the proper position at Rondout.

Mr. Camargo was charged with alleged violation of On-Track Safety Rules: Rule 23.3.3 and Rule 23.4.

The letter of November 7, 2001, to Mr. Camargo calling for the investigation and the specific charges of Safety Rules 23.3.3 and Rule 23.4 outlined in the letter is attached to this Award.

The investigation was postponed until November 26, 2001, and held on that date.

Following the investigation, Mr. Camargo was sent a Certified Mail letter dated December 13, 2001, advising him that a review of the investigation

transcript has resulted in Mr. Camargo being issued discipline of Three (3) days deferred suspension.

The letter of discipline dated December 13, 2001, is attached to this Award.

The transcript of the investigation held on November 26, 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:

This dispute centers on an incident occurring at the Rondout Interlocking Plant on October 31, 2001, when track maintenance work was being performed on the plant by two (2) track ballast regulator machines. The regulator machines were operated by Mr. Richardo Hernandez and Mr. Roberto Camargo, under the direction and supervision of Foreman Jose Ramirez. The two machines were working on the Rondout Plant under a protection order (foul time) issued by Tower Operator Jeffrey Varney to Foreman Jose Ramirez. Mr. Camargo was charged with failure to operate his regulator machine in a safe manner when he proceeded over a switch when it was not in the proper position.

In our review of the testimony of all of the individuals who were involved at the work site of the incident, it is quite clear as to what transpired. First, it is

important to note that the incident occurred on a busy interlocking plant where during certain periods because of the heavy volume of train traffic both commuter and freight, the maintenance work must be done during short periods of time that are made available to the work force by the Tower Operator. The Tower Operator is responsible for operating the interlocking plant in a safe and efficient manner so as to avoid delays to frequent regular train traffic which occurs on a daily basis and ensure the safety of the work forces who perform their assigned maintenance duties within the confines of the interlocking plant.

In the instant dispute, Mr. Jose Ramirez, the Foreman in charge of the work force which included the two regulator machines being operated by Mr. Ricardo Hernandez and Mr. Roberto Camargo, had secured permission (foul time) from the Tower Operator Mr. Jeffrey Varney to do their maintenance work on the plant. In instances such as the one involved in this case, it is sometimes necessary for the machine operator to operate his machine in a safe manner while doing their assigned tasks and, additionally in so doing, they must at times rely on hand signals from the Foreman in charge as it is difficult to observe every condition from their limited visibility position in the cab of the machine.

Additionally, there is the awareness and pressure of performing your assigned duties in a limited time frame which is frequently prevalent on a busy interlocking plant such as the one at Rondout which handles 35 to 40 trains during an 8-hour shift.

All of the foregoing factors were present in the situation which gave rise to the incident in the instant dispute.

Mr. Jose Ramirez, the Foreman in charge, followed all the correct procedures in working with Mr. Varney, the Tower Operator, to arrange for working time on the interlocking plant. It was in the process of exiting the plant that the incident occurred with the regulator machine being operated by Mr. Camargo.

Mr. Hernandez was instructed by Mr. Ramirez to move his machine first to south of the Crossing Rte. 176. Mr. Camargo, who was operating from a different track, was given hand signals by Foreman Ramirez to move ahead when he, Mr. Rameriz, realized that he had not contacted Mr. Varney, the Tower Operator, to reverse the switch for proper movement of Mr. Camargo's machine over the switch. Mr. Camargo relied on the hand signals from Mr. Ramierz and as a result ran through the switch. There was no extensive damage done to the switch, and the record shows that there were signal maintenance forces present to restore the switch to proper working condition.

Mr. Ramirez testified at the investigation that he was at fault and made the mistake of giving Mr. Camargo a hand signal to proceed without first calling the plant operator Mr. Varney to reverse the switch.

The circumstances and facts in this dispute clearly show that an error was made by Foreman Ramirez. Mr. Camargo responded to the hand signal to proceed

and cannot be faulted for proceeding under the conditions that were present at the busy Rondout plant.

In the instant dispute, Mr. Camargo was assessed discipline of Three (3) days deferred suspension.

In checking Mr. Camargo's personal work record, we note that he has been an employee in many and varied job classifications. We note no evidence of disciplinary action against him in all of his years of employment.

In our opinion based on the record before us on this dispute, there is no basis for any disciplinary action against Mr. Camargo. Accordingly, it is our decision that the letter of December 13, 2001, assessing discipline of Three (3) days deferred suspension be rescinded and Mr. Camargo's record be cleared of the charges.

AWARD:

Claim sustained.



Charles J. Chamberlain
Neutral Member

Date February 14, 2002

NORTHEAST ILLINOIS RAILROAD CORPORATION

Milwaukee District Engineering
2931 West Chicago Avenue
Chicago, Illinois 60622

NOTICE OF INVESTIGATION

November 7, 2001

FIRST CLASS MAIL & CERTIFIED MAIL

Mr. R. Camargo, Machine Operator, #5541

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, Wednesday, November 14, 2001 at 11:00 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 operate the regulator in a safe manner on October 31, 2001, when you allegedly proceeded over a switch when it was not in the proper position at Rondout.

In connection, therewith, you are charged with the alleged violation of the following On-Track Safety Rules: **Rule 23.3.3** and **Rule 23.4** as outlined below:

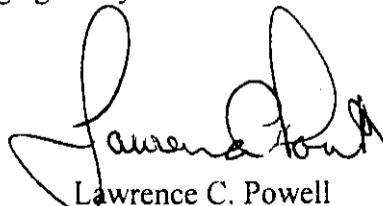
Rule 23.3.3 "On track equipment must approach railroad crossings, drawbridges, remote control switches, dual control switches, derails and trackside warning detects prepared to stop, and may then proceed over them if in proper position for their movement at a speed not to exceed 10 MPH."

Rule 23.4 "On track equipment must be operated at a speed that will allow the operator to stop within one-half the range of vision."

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



Lawrence C. Powell
General Bridge & Building Supervisor-Capital

J. Varney, Tower Operator, Rondout--- Please arrange to appear as a company witness
J. Ramirez, Track Foreman, Rondout--- Please arrange to appear as a company witness

NORTHEAST ILLINOIS RAILROAD CORPORATION

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

Results of Investigation

CERTIFIED MAIL

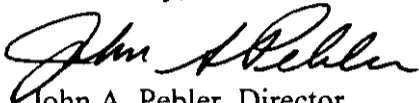
Mr. R. Camargo, Machine Operator, #5541

December 13, 2001

A review of the transcripts of **the investigation**, held on November 26, 2001, **has resulted in the following discipline being issued: Three (3) days deferred suspension.**

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) 322-4103

JAP/tmc

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

--LABOR REL--

17 DEC 01 3:30

NORTHEAST ILLINOIS REGIONAL COMMUTER RAILROAD CORPORATION

NOTICE OF DISCIPLINE

R. Camargo, #5541

Rondout

John A. Pebler

Employee Name

Work Location

Supervisor assessing discipline

DATE: December 13, 2001

**X FORMAL INVESTIGATION SCHEDULED FOR
NOVEMBER 14, 2001 AND POSTPONED AND
HELD ON NOVEMBER 26, 2001**

WAIVER OF INVESTIGATION

Has indicated your responsibility in connection with the violation of **On Track Safety Rules: Rule 23.3.3 and Rule 23.4** when you failed to operate the regulator in a safe manner and proceeded over a switch that was not in the proper position at Rondout on October 31, 2001. Therefore, you are hereby assessed the following discipline which will also be entered on your personal record:

<u>Formal</u>	<u>Waiver</u>
1. Formal Letter of Reprimand (effective for two years)	1. Formal Letter of Reprimand (effective for one year)
X 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)
Your record indicates a deferred suspension of ____ day(s) 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 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

cc: Metra Personnel