

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1122

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

NMB Case No. 18

This dispute involves Mr. Nathan E. Fulbright employed by Metra as a B&B Mechanic.

Mr. Fulbright was hand delivered a letter dated March 4, 2002, instructing him to attend a formal investigation on Wednesday, March 13, 2002, for the purpose of developing the facts, determine the cause and assess responsibility, if any, in connection with the alleged failure of Mr. Fulbright to properly protect his position as B&B Mechanic on Sunday, March 3, 2002, when he allegedly failed to follow instructions and report for snow duty.

Mr. Fulbright was charged with alleged violation of Metra Employee Conduct Rules: Rule B, "Employees must have proper understanding and working knowledge of and obey all rules and instructions in whatever form issued, applicable to, or affecting their duties" and 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.

The letter of March 4, 2002, calling for the investigation and the specific charges of Metra Employee Conduct Rules B and Q and Engineering Department Special Instruction No. 1 concerning Metra's Engineering Department Attendance Policy is attached to this Award.

The investigation for March 13, 2002, was postponed until March 26, 2002, subsequently postponed until March 27, 2002, postponed again until April 10, 2002, and held on that date.

Following the investigation, Mr. Fulbright received a letter dated April 30, 2002, advising him that he had been assessed discipline of a Formal Letter of Reprimand for violation of Rule Q and Engineering Department Special Instruction No. 1, for failing to protect his position as B&B Mechanic on Sunday, March 3, 2002.

The letters of April 30, 2002, are attached to this Award.

The transcript of the investigation held on April 10, 2002, 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 issue in this dispute involves the question of overtime work on the weekend of March 2 and 3, 2002, necessitated by inclement weather conditions, excessive snowfall, which required the services of Maintenance of Way employees to remove snow to ensure the safe operation of Metra trains and facilities used by the general public.

On the particular weekend in question, the actual excessive snowfall and predictions for the Chicago area necessitated Carrier officials to use its Maintenance of Way crews on Saturday and Sunday to work long overtime hours in its endeavor to remove snow from station platforms, interlocking plants and other areas to ensure the safe movement of its trains and the traveling public.

Mr. Fulbright was assigned to a position of B&B Mechanic in a crew under the supervision of Mr. Daniel Colantuona, B&B Supervisor and Mr. Robert Ochoa, B&B Foreman.

On March 1, 2002, Mr. Lawrence C. Powell, General B&B Supervisor, issued instructions to employees under his jurisdiction to report for emergency snow removal duty on March 2 and 3, 2002.

Mr. Fulbright received the instructions from his Foreman, Roberto Ochoa, and immediate Supervisor, Mr. Daniel Colantuono, and did report for work on March 2, 2002, but did not report for work on Sunday, March 3, 2002.

The transcript testimony of Mr. Fulbright reveals that he advised his Foreman on March 2, 2002, that he could not report for overtime work on Sunday,

March 3, 2002, because of his religious obligations. The transcript record reveals that Mr. Fulbright was advised that failing to report for the emergency overtime duty on Sunday, March 3, 2002, could possibly result in disciplinary action against him.

The record shows that Mr. Fulbright was notified on March 4, 2002, that a formal investigation would be held on March 13, 2002, for the purpose of determining the facts in connection with his alleged failure to protect his position as B&B Mechanic on March 3, 2002. The investigation was held on April 10, 2002, and following the investigation, Mr. Fulbright was assessed discipline of a Letter of Reprimand.

We have carefully reviewed the entire transcript and the testimony of all who testified.

There is no dispute as to the factual account of what transpired in this incident.

The issue to be decided is whether Mr. Fulbright violated the Carrier rules as charged when he refused to work overtime required of his position as B&B Mechanic on March 3, 2002.

In view of the inclement weather conditions which occurred on the weekend in question and the fact that it was an emergency situation which required the Carrier to use its regular work force to work long hours on both days, we cannot find any fault for the Carrier's action in assessing minor discipline in

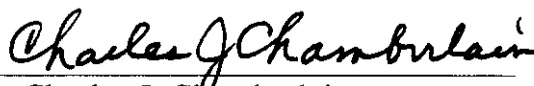
the form of a Letter of Reprimand against Mr. Fulbright, the accused, who failed to protect his position as B&B Mechanic.

While the Organization went to great length in trying to persuade the Hearing Officer that religious functions on the part of the accused justified his refusal to work, we cannot support that argument or logic.

The very nature of the operation of any railroad, be it passenger or freight, requires the use of its employees, who by contract are required to fulfill the duties and skills of the position to which they are assigned during regular assigned working hours, and also overtime hours in emergency and planned work situations. Employees cannot individually or unilaterally circumvent the responsibility of protecting and fulfilling the obligations and responsibilities of the position to which they are assigned. The testimony of Mr. Powell clearly pointed out that the only exceptions being emergency situations affecting an employee and/or his family.

Accordingly, based on the record before us, it is clear that Mr. Fulbright violated the Carrier rules as charged, and we find no basis for overturning the discipline of Letter of Reprimand assessed Mr. Fulbright.

AWARD: Claim denied.



Charles J. Chamberlain
Neutral Member

Date July 12, 2002

NORTHEAST ILLINOIS RAILROAD CORPORATION

Milwaukee District Engineering
2931 West Chicago Avenue
Chicago, Illinois 60622

NOTICE OF INVESTIGATION

March 4, 2002

HAND DELIVERED

Mr. N. Fulbright, B&B Mechanic #7921

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 on Wednesday, March 13, 2002 at 1:00 p.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 properly protect your position as B&B Mechanic on Sunday, March 3, 2002 when you allegedly failed to follow instructions and report for snow duty.

In connection therewith you are charged with alleged violation of the following **Metra Employee Conduct Rules**: **Rule B**, "Employees must have proper understanding and working knowledge of and obey all rules and instructions in whatever form issued, applicable to, or affecting their duties" and **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 BMW-Granier

L/C BMW-Hooker

V. L. Stoner

R. C. Schuster

W. K. Tupper

G. Washington

H. Thomas

J. Barton

C. Cary

.. C. Powell----Please arrange to appear as a company witness

R. Ochoa----Please arrange to appear as a company witness



John A. Pebler, Director
Milwaukee District Engineering

NORTHEAST ILLINOIS RAILROAD CORPORATION

MILWAUKEE DISTRICT ENGINEERING
2931 W. CHICAGO AVE.
CHICAGO, ILLINOIS 60622

RESULTS OF INVESTIGATION

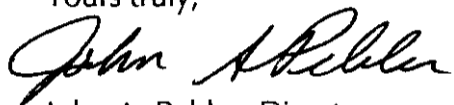
April 30, 2002

Mr. N. Fulbright, B&B Mechanic, #7921

A review of the transcripts of **the investigation**, scheduled for March 13, 2002, postponed for March 26, 2002, postponed for March 27, 2002, and postponed and held on April 10, 2002, **has resulted in the following discipline being issued: Letter of Reprimand in effect for two (2) years.**

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/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

0 57 20 1000

LABOR REL--

NORTHEAST ILLINOIS REGIONAL COMMUTER RAILROAD CORPORATION

MILWAUKEE DISTRICT ENGINEERING
2931 W. CHICAGO AVE., CHICAGO, ILLINOIS, 60622

NOTICE OF DISCIPLINE

N. Fulbright, #7921

Western Ave.

John A. Pebler

Employee Name

Work Location

Supervisor assessing discipline

DATE: April 30, 2002

X FORMAL INVESTIGATION

WAIVER OF INVESTIGATION

SCHEDULED FOR MARCH 13, 2002,
POSTPONED FOR MARCH 26, 2002,
POSTPONED FOR MARCH 27, 2002, AND
POSTPONED AND HELD ON APRIL 10, 2002

Has indicated your responsibility in connection with the violation of Metra Employee Conduct Rules: **Rule Q and Engineering Department Special Instruction No. 1** concerning Metra's Engineering Department Attendance Policy, when you failed to properly protect your position as B&B Mechanic on Sunday, March 3, 2002, when you failed to follow instructions and report for snow duty. Therefore, you are hereby assessed the following discipline which will also be entered on your personal record:

<u>Formal</u>	<u>Waiver</u>
X 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


Fulbright-cont'd

Fulbright-Page 2

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

Fulbright-cont'd

NORTHEAST ILLINOIS REGIONAL COMMUTER RAILROAD CORPORATION

MILWAUKEE DISTRICT ENGINEERING
2931 W. CHICAGO AVE., CHICAGO, ILLINOIS, 60622

LETTER OF REPRIMAND

April 30, 2002

Mr. N. Fulbright, B&B Mechanic, #7921

This letter of reprimand is being written concerning your responsibility for **"failure to properly protect your position as B&B Mechanic on Sunday, March 3, 2002 when you failed to follow instructions and report for snow duty."**

The responsibility for complying with the rules and instructions is entirely yours. There is no excuse for your failure to meet the obligation that you accepted when you began with this carrier. This, as well as any other type of rule violations are not taken lightly by this carrier. Any future violations will be handled with formal investigations and possible discipline more severe than simply a letter of reprimand.



John A. Pebler, Director
Milwaukee District Engineering

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