

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1122

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

NMB Case No. 22

This dispute involves Mr. Antonio Huerta employed by Metra as a Trackman.

Mr. Huerta was sent a letter dated May 23, 2002, instructing him to attend a formal investigation on Thursday, May 30, 2002, for the purpose of developing the facts, determining the cause and assess responsibility, if any, in connection with the alleged theft of company material, failure to follow instructions regarding his work assignment that day, failure to devote yourself to your duties, theft of time, and possession of company material without authorization, when on Thursday, May 16, 2002, you were observed off your work assignment in the vicinity of 7802 S. Greenwood Avenue, Chicago, Illinois, at approximately 8:30 a.m. using a company vehicle and company tools to reduce company material to scrap.

Mr. Huerta was charged with possible violation of Metra Employee Conduct Rule Nos.: K (Para. 2), N(4), Q (Para. 1), and Maintenance of Way Rule 1.15.

The letter of May 23, 2002, to Mr. Huerta calling for the investigation and the specific charges of Carrier Rule violations is attached to this Award.

The record shows that Mr. Huerta was hand-delivered a letter dated May 16, 2002, from Mr. W.T. Archer, Director of Engineering Metra Electric District, removing him from service immediately pending the investigation to be held on May 30, 2002. The removal from service letter of May 16, 2002, is attached to this Award.

The investigation was held as scheduled on May 30, 2002.

Following the investigation, Mr. Huerta received a Notice of Discipline letter dated June 14, 2002, dismissing him for service effective on June 14, 2002, for violation of NIRCRC Rules on the date of the incident occurring on May 16, 2002.

The Notice of Discipline letter dated June 14, 2002, is attached to this Award.

The transcript of the investigation held on May 30, 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:

This dispute involves an incident occurring at 8:30 a.m. on May 16, 2002, when Mr. Fred Leonard, Chief of Police for Metra, was making a routine station inspection at 79th and the Metra Electric Mainline.

While on the platform at 79th Street, Mr. Leonard observed a white pickup truck parked along the east side of the Metra Electric right of way at approximately 78th Street.

The testimony of Chief Leonard in the investigation transcript clearly details what he observed and what took place on the day of the incident. For the record, we are quoting Chief Leonard's testimony from pages 15, 16 and 17 of the investigation transcript:

W.T. Archer

F. Leonard

Q. Chief, could you tell us in your own words what happened that morning?

A. Yes, that morning I was doing a station inspection at 79th and the Metra Electric Mainline, at approximately 0829 hours. While on the platform at 79th Street, I observed a white pick-up truck parked along the east side of the Metra Electric right of way at approximately 78th Street, and I saw three (3) individuals around the truck and at the time, thought that to be a very natural thing. I considered them to be employees working there.

However, after remaining on the platform for a couple minutes, I observed the subjects remove some type of piece of equipment from the truck. I couldn't tell exactly what it was from that point, and they proceeded to walk eastbound up over a berm, separating Metra property from private property, along the east side of the right of way. They disappeared from my view for a period of time. However, occasionally I would see one subject come to the top of the berm and then return to the east side of the berm.

I watched this activity for approximately twenty (20) minutes, then I returned to the street, got in my vehicle and drove up onto the right of way along the east side and proceeded northbound, pulling up in back of the white pick up truck that was parked there.

As I did, I observed Mr. Bettis on top of the berm with a white piece of aluminum, what appeared to be a silver pipe of some type. He dropped the pipe and walked westward down the...off the berm and onto the right of way. He proceeded to walk north for a while, then turned around and came back south. I walked up onto the berm and observed Mr. Matthies and Mr. Huerta at the bottom of the east side of the berm. Mr. Huerta was in the process of using, what appeared to be, a track saw to cut aluminum...or what appeared to be...aluminum piping, located on private property off on the east side of the berm.

Mr. Matthies came to the top of the berm. I told him to call Mr. Huerta to the top also and bring the saw with him. All of us then proceeded to go down to the west side of the berm, back onto Metra property.

While I was on the top of the berm, I was able to see numerous, what appeared to be some type of electrical connectors, scattered over a seventy-five (75) to one hundred (100) foot area. Also, a large quantity of what appeared to be aluminum pipe of some type, on top of the berm and also on the east side of the berm.

I...when the three (3) employees reached the west side of the berm, were back on Metra property, I asked them to produce I.D. cards. They produced their Metra Employee I.D. Cards. I asked Mr. Matthies who he worked for. He said he worked for Mr. Stuckey. I contacted our communications center from my car and asked them to contact Mr. Stuckey and anyone else that needs to be informed of an irregularity that was in progress.

While I was in my car, seated in my car with the driver's door open, Mr. Matthies came up to me and squatted down by the side of the car and asked me if there was some way we could mke this go away, just forget the whole thing, and he'd replace all of the scrap material, and I said, "No".

After a few minutes, a second car arrived at my request and we all stood by and waiting for other Metra officials to make proper identification of the items that were located. At that point, Captain Dorsey transported the three (3) individuals to KYD and were turned over to the proper authorities.

Q. All the pictures that you referred to previously, they are of the scene and the area that you just described in your testimony?

A. That's correct.

It is clear from the testimony of Chief Leonard that Track Foreman Richard Matthies, Trackman Antonio Huerta and Trackman Charles Bettis were the three (3) Metra Employees at the site of the incident that took place at 79th Street.

The testimony of Roadmaster Mr. M.J. Stuckey under whose supervision Mr. Matthies, Mr. Huerta and Mr. Bettis worked, revealed that at the regular morning job briefing on May 16, 2002, Foreman Matthies, Trackman Huerta and Trackman Bettis were assigned to do general switch maintenance in the CTC territory.

The record reveals that Roadmaster Stuckey and Director W.T. Archer, M/E Engineering Department, both responded to the call from Chief Leonard and drove to the scene of the incident, observed what had taken place and returned the (3) three employees to KYD where they were given a letter removing them from service and escorted off the property.

From our review of the transcript testimony of all who testified at the investigation on May 30, 2002, there is no dispute as to what took place. Foreman Matthies testified that he, Mr. Huerta and Mr. Bettis were assigned on May 16, 2002, to work on switch maintenance in the yards in CTC territory.

Foreman Matthies testified that they did not perform their assigned duties in the CTC territory but went to 79th Street to cut up scrap.

Trackman Huerta testified that he was cutting up scrap at 79th Street when observed by Chief Leonard on May 16, 2002.

In response to a question from the Hearing Officer on page 35 of the transcript as to how do you account for the copper and aluminum material that was in the back of the company truck, Mr. Huerta's response was "There was. . .over at

the KYD, there was a lot of copper on the ground and. . .I guess you could call it temptation, we picked it up and put it in the truck.”

It was in the process of cutting up the scrap material that the (3) three employees charged were noticed by Chief of Police Leonard who drove to the scene; and after observing what was taking place, he called Roadmaster Stuckey and Director Archer, M/E Engineering Department, who both went to the scene, identified the employees and took action to remove them from service pending the investigation which was called for and held on May 30, 2002.

The record and testimony in the investigation transcript confirm that Mr. Huerta violated the Carrier Rules as charged by the Carrier.

We can find no fault with the procedures followed by Carrier officials in responding to the incident and in their conduct of the investigation. The investigation was held in a fair and impartial manner.

In reviewing the transcript, it is noted that Carrier officials Stuckey and Archer testified that Mr. Huerta was a valued employee. A review of his personal employment record reveals no prior discipline during his many years of employment.

However, based on the nature of the offense involved in this dispute, the obvious disregard for following instructions for the work assignment for the day and the mass of evidence describing the scrap materials that were being cut up and in the truck, negates any consideration by this Board for any leniency in this decision.

Accordingly, there is no basis for overturning the Carrier decision of the dismissal of Mr. Huerta from service.

AWARD:

Claim denied.

Charles J. Chamberlain

Charles J. Chamberlain
Neutral Member

Date August 15, 2002



Metra KYD Facility
12301 S. Indiana Avenue
Chicago, IL 60628

May 23, 2002

R. E. Matthies, 4657
9431 Oreole Drive
Munster, IN 64321
FED EX #823686995076

A. I. Huerta, 5317
10446 So. Ave. "L"
Chicago, IL 60617
FED EX #823686995087

C. Bettis, 4649
1310 Portland Ave.
Chgo. Hts., IL 60411
FED EX #8236869905098

Gentlemen:

Arrange to attend a formal investigation to be held in the KYD Conference Room, 12301 S. Indiana Avenue, Chicago, IL 60628, at 8:00 a.m., Thursday, May 30, 2002.

The purpose of this investigation is to develop the facts, determine the cause, and assess responsibility, if any, in connection with your alleged theft of company material, failure to follow instructions regarding your work assignment that day, failure to devote yourself to your duties, theft of time, and possession of company material without authorization, when, on Thursday, May 16, 2002, you were observed off your work assignment in the vicinity of 7802 S. Greenwood Avenue, Chicago, IL, at approximately 8:30 a.m. using a company vehicle and company tools to reduce company material to scrap.

In connection therewith, you are charged with possible violation of Metra Employee Conduct Rule Nos.: K (Para. 2), N(4), Q (Para. 1), and Maintenance of Way Rule 1.15.

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.

Your past personal record may be reviewed at this investigation (copy attached).

Sincerely,

W. T. Archer
M/E Engineering Department

Attachment

cc: V. L. Stoner
W. K. Tupper
R. C. Schuster
C. Cary
J. Barton
D. Mogan

G. Washington
H. Thomas
H. J. Granier, G/C
R. Hooker, L/C
F. Leonard - Please arrange to
M. J. Stuckey - attend as company
G. Collins - witnesses.

Metra KYD Facility
12301 S. Indiana Avenue
Chicago, IL 60628

May 16, 2002

HAND DELIVERED

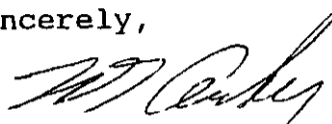
Mr. Antonio I. Huerta Emp. #5317
10446 South Avenue "L"
Chicago, IL 60617

Dear Mr. Huerta:

You are hereby removed from service, effective immediately,
pending an investigation for your alleged violation of Metra's
Employee Conduct and Maintenance of Way Rules.

Please turn in all Company property, keys, passes, and
identification cards issued to you to Mr. W. T. Archer, Metra
Electric District.

Sincerely,



W. T. Archer
Director of Engineering
Metra Electric District

cc: V. L. Stoner
W. K. Tupper
R. C. Schuster
G. Washington
C. Cary
J. Barton
D. S. Mogan
N. Petrowski
F. Leonard
M. J. Stuckey
H. J. Granier, G/C
T. P. Petty, L/C

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NORTHEAST ILLINOIS REGIONAL COMMUTER RAILROAD CORP.

NOTICE OF DISCIPLINE

FED EX TRACKING NUMBER: 823686995113

W. K. Tupper, Chief Eng. Officer
SUPERVISOR ASSESSING DISCIPLINE

547 W. Jackson Blvd., 7th Floor
WORK LOCATION

June 14, 2002
DATE

A. I. Huerta, Emp. 5317
EMPLOYEE NAME (TYPE OR PRINT)

☒ **Formal Investigation** ☐ **Waiver of Formal Investigation** (check proper box) has indicated your responsibility for violation of NIRCRC Rules in the following incident (describe):

Theft of company material, failure to follow instructions regarding work assignment, failure to devote yourself to your duties, theft of time, and possession of company material without authorization, when on Thursday, May 16, 2002, you were observed off your work assignment in the area of 7802 S. Greenwood Ave, Chicago, IL., at approximately 8:30 a.m., using company tools and vehicle to reduce company material to scrap.

Therefore, you are assessed the following discipline which will also be entered into your personal employment record (check appropriate box or boxes).

☐ **1. Formal reprimand** (letter attached).

☐ If you waive investigation, the reprimand letter will be effective for one year.

☐ **2. Three work days deferred suspension** [this suspension will remain deferred for 2 years and will be served as actual suspension if further discipline is assessed during that period.]

☐ If you waive investigation, one work day of deferred suspension is assessed instead of three work days.

☐ 3. Five work days actual suspension.

- ☐ If you waive investigation, three work days of suspension will be served instead of five work days, plus the deferred days from Step 2.
- ☐ Your record indicates deferred suspension of _____ work days which was assessed on _____ and must be served in conjunction with discipline noted above.

☐ 4. Ten work days actual suspension.

- ☐ If you waive investigation, seven work days of suspension will be served instead of ten work days.

☐ 5. Period of Suspension (if applicable).

Suspension from your job assignment will begin on _____ and will end _____ . You must return to work on _____. Failure to return on that date will be regarded as an unauthorized absence.

.....

☒ 6. Dismissal. Your employment with this corporation is terminated effective June 14, 2002 (date). You must immediately return all company property.

8:15 a.m. June 14, 2002
Time Date

 WTA
Signature & title of Supvr assessing discipline

Employee

Union Witness

cc: Metra Personnel