

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1122

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

NMB Case No. 24

This dispute involves Mr. Daniel C. Linstrot employed by Metra as a B&B Foreman.

Mr. Linstrot was hand delivered a letter dated September 3, 2002, instructing him to attend a formal investigation on Thursday, September 12, 2002, for the purpose of developing the facts, determine the cause and assess responsibility, if any, in connection with an alleged altercation occurring on Tuesday, August 27, 2002, when he allegedly threw ballast that struck a company vehicle.

Mr. Linstrot was charged with alleged violation of Metra Employee Conduct Rules, Rule N and GCOR Rule No. 1.7, Altercations.

The letter of September 3, 2002, to Mr. Linstrot calling for the investigation and the specific charges is attached to this Award.

The investigation was postponed until September 25, 2002, and held on that date.

Following the investigation, Mr. Linstrot was hand delivered a letter dated October 9, 2002, advising him that a review of the investigation transcript has resulted in Mr. Linstrot being issued discipline of Three (3) work days deferred

suspension plus the one (1) work day deferred suspension that was assessed on October 19, 2000, to be served as outlined in the attached Notice of Discipline.

The letter of discipline dated October 9, 2002, is attached to this Award.

The transcript of the investigation held on September 25, 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 is the charge by the Carrier that Mr. Linstrot violated Metra Employee Conduct Rules, Rule N and GCOR Rule No. 1.7, Altercations on Tuesday, August 27, 2002, when he allegedly threw ballast that struck a company vehicle that was parked in front of a signal relay case at Narragansett Avenue.

Mr. Carl Fatora, Signal Maintainer, Galewood, was sitting in the truck when the alleged incident occurred.

Mr. Fatora reported the alleged incident to his supervisor which led to the charge against Mr. Linstrot.

At the investigation, Mr. Fatora testified that he tried to contact Mr. Linstrot on his Nextel phone to alert him to the fact that a front end loader had a

flat tire. Mr. Fatora testified that Mr. Linstrot, after looking at his phone to see who was calling, seemed to pick up the rocks and started to throw them.

Mr. Linstrot, the accused, testified at the investigation that he was in charge of the road crossing repair project at Narragansett Avenue and installing rubber on three main. Mr. Linstrot testified that he got chirped twice by Mr. Fatora but did not answer the phone because he had a deadline to get the rubber installed.

Mr. Linstrot testified that he did not throw any rocks at the truck as alleged by Mr. Fatora.

Based on the testimony in the transcript of the investigation held on September 25, 2002, it is evident that there is a definite difference of opinion as to what transpired. Mr. Fatora testified that Mr. Linstrot threw two rocks and Mr. Linstrot testified that he did not.

Although there were many employees, 30 or 40, at the work site at the Narragansett Avenue crossing on the day of the alleged incident, there were no witnesses present at the investigation to corroborate or confirm as to what did or did not take place.

In our opinion, because of the large number of employees at the work site, an effort could have been made to have one or more witnesses at the investigation to testify as to what, if anything, did take place.

However, that was not the case and all we have before us in the record is the two employees involved giving their decidedly different stories as to what took place.

Accordingly, we have reviewed the charge by the Carrier against Mr. Linstrot in this dispute.

Mr. Linstrot was charged with violation of Employee Conduct Rules, Rule N and GCOR Rule 1.7, Altercations.


There is no evidence in the record that an altercation took place. The definition of an altercation is a "heated and noisy quarrel." There is no evidence that such was the case in this dispute; in fact, the transcript testimony reveals that there was no conversation between Mr. Linstrot and Mr. Fatora, the two individuals involved in this dispute. There is no evidence in the record to show that Mr. Linstrot violated the Rules as charged by the Carrier.

Based on the foregoing, it is the decision of this Board that the discipline assessed Mr. Linstrot in the Notice of Discipline letter of October 9, 2002, is not warranted and the letter should be rescinded and removed from his record.

Additionally, Mr. Linstrot should be compensated for any time lost.

AWARD:

Claim sustained in accordance with the above findings.



Charles J. Chamberlain
Neutral Member

Date November 18, 2002

NORTHEAST ILLINOIS RAILROAD CORPORATION

Milwaukee District Engineering
2931 West Chicago Avenue
Chicago, Illinois 60622

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NOTICE OF INVESTIGATION

September 3, 2002

HAND DELIVERED

Mr. D. Linstrot, B&B Foreman, #5401

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, Thursday, September 12, 2000 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 altercation when you allegedly threw ballast that struck a company vehicle on Tuesday, August 27, 2002.

In connection, therewith, you are charged with the alleged violation of the following Metra Employee Conduct Rules, **Rule N and GCOR Rule No. 1.7, Altercations.**

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.



David P. Leahy, Maintenance Engineering Supervisor
Milwaukee District Engineering

G/C BMW E
L/C BMW E

V. L. Stoner
W. K. Tupper
R. C. Schuster
G. Washington
H. Thomas
J. Barton
C. Cary

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NORTHEAST ILLINOIS RAILROAD CORPORATION

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

--LABOR REL--

Results of Investigation

11 OCT 02 2:13 PM

October 9, 2002

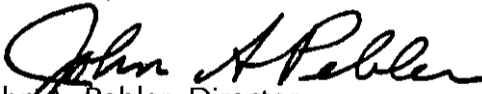
Hand Delivered

Mr. D. Linstrot, B&B Foreman, #5401

A review of the transcripts of **the investigation**, scheduled for September 12, 2002, and postponed and held on September 25, 2002, **has resulted in the following discipline being issued: Three (3) work day deferred suspension plus the one (1) work day deferred suspension that was assessed on October 19, 2000 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-
V. L. Stoner
W. K. Tupper
R. C. Schuster
G. Washington
P. Connor
J. Barton
C. Cary

NORTHEAST ILLINOIS REGIONAL COMMUTER RAILROAD CORPORATION

NOTICE OF DISCIPLINE

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D. Linstrot, #5401

Western Avenue

John A. Pebler

Employee Name

Work Location

Supervisor assessing discipline

DATE: October 9, 2002

X FORMAL INVESTIGATION
SCHEDULED FOR SEPTEMBER 12, 2002,
POSTPONED AND HELD ON
SEPTEMBER 25, 2002

WAIVER OF INVESTIGATION

Has indicated your responsibility in connection with the violation of Metra Employee Conduct Rules, **Rule N and GCOR Rule No. 1.7, Altercations**, when you were engaged in an altercation when you threw a rock that struck a company vehicle on Tuesday, August 27, 2002. 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)
<p>Your record indicates a deferred suspension of <u>1</u> day(s) was assessed on <u>October 19, 2000</u> and must be served in conjunction with discipline outlined above.</p> <p>As a result, suspension will begin <u>October 14, 2002</u> and end <u>October 14, 2002</u>. You must return to work on <u>October 15, 2002</u>. 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
<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>	
5. Dismissal	5. Dismissal
<p>Your employment with this Corporation is terminated effective _____. You must return all company property.</p>	

Employee

Union Witness

Supervisor assessing discipline

cc: Metra Personnel