

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1122

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

NMB Case No. 25

This dispute involves Mr. Jesus Unzueta employed by Metra as Assistant Track Foreman.

Mr. Unzueta was sent via first-class mail and certified-mail a letter dated October 15, 2002, instructing him to attend a formal investigation on Thursday, October 24, 2002, for the purpose of developing the facts, determine the cause, and assess responsibility, if any, in connection with his alleged failure to protect his position on Monday, October 7, 2002.

Mr. Unzueta was charged with alleged violation of Metra Employee Conduct Rule "Q", Paragraph 1 and Metra's Special Instruction #1, Page 1 last paragraph.

The letter of October 15, 2002, to Mr. Unzueta calling for the investigation and the specific charge of the violation of the Carrier's Rules is attached to this Award.

The investigation of Mr. Unzueta scheduled for October 24, 2002, was postponed until October 31, 2002, and held on that date.

Following the investigation, Mr. Unzueta was sent a Notice of Discipline letter dated November 18, 2002, assessing him discipline of dismissal from service effective November 18, 2002.

The letter of November 18, 2002, is attached to this Award.

The transcript of the investigation held on October 31, 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 Claimant in this case was charged with failing to protect his position on Monday, October 7, 2002. While Monday normally was a rest day for the Claimant, he had accepted an overtime assignment that day and was expected to report for duty. The Claimant readily admitted that he did not report for work, however, and the record shows that he did not request or receive permission to be absent.

During the investigation on October 31, 2002, the Claimant explained that he did not report for the overtime assignment because he was trying to take care of some personal problems involving his family. He stated, however, that he knew he was required to call in if he was not going to report for work.

Based on the Claimant's own testimony, there can be no question that the Claimant failed to protect his position. Therefore, the only question for the Board to resolve is whether it was appropriate to terminate the Claimant's employment for this infraction.

In considering this question, the Board first takes note of the Claimant's record, which shows that he has worked in the Carrier's Track Department since 1993. Prior to 2001, the Claimant apparently had no discipline problems. Over the past two years, however, he developed a serious attendance problem that ultimately led to his dismissal. The Carrier attempted, through the application of progressive discipline, to get the Claimant to correct his conduct, but as this most recent incident shows, the threat of more severe discipline did not convince the Claimant to change his behavior.

The Board also takes note of the decision rendered in our Award No. 20, which upheld a 10-day suspension assessed when the Claimant was absent without authority for three days earlier in 2002. In that Award, this Board stated: "...it is clear that Mr. Unzueta has failed to recognize the importance and necessity to communicate with his supervisory officials concerning his unexplained absences from duty without permission. . .Mr. Unzueta must soon recognize the dire consequences of further incidents of failure to comply with Carrier Rules and regulations."

The Claimant, Mr. Jesus Unzueta, in this investigation stated that he was sorry for his past behavior and would change his ways if he is given another opportunity. We quote from Page 41 of the investigation transcript:

MR. UNZUETA: Well, I know I'm here, coming here for missing days that I should be at work.

I know I've been having problems with my marriage since a long time ago, especially from this time when I got divorced from her, and the only thing I worry about, I'm really worried about my son, he's 11 years old now, and I'm, myself, my passion for myself is the Metra company, they would be understandable to me, that I don't want to lose my job.

I want to work, because I've got a child to support and myself.

The only thing I can say is I'm sorry for all my past that I missed so many days and if the company can hear my statement, I know right now, Mr. Gage and Rosales, they were okay, I was wrong, I should have called in, but if Metra can give me another opportunity to show them that I can make it, and then that means no days and all the days I can, I'll work all the days I can.

If they can give me my job, I promise myself and I promise Metra that I'm going to do real good, because I know when I say I'll do it, I do it.

So, that's all I can say.

Normally, this Board would not consider an employee with such a deplorable record to be a worthy candidate for reinstatement. However, in this case, it is clear that the Claimant's attendance problems have been due in part to some personal difficulties involving his family. Accordingly, the Board believes

that the Claimant should be given one final opportunity to show that he can be a reliable and productive employee.


Accordingly, it is the determination of the Board that the Claimant shall be returned to service with his seniority and all other rights unimpaired, but without pay for lost time. The Claimant shall be placed in a probationary status for one year following his return to work. During such time, he will be subject to termination for violation of Carrier rules or policies on the same basis as a newly hired, probationary employee.

Prior to returning to service, the Claimant will be required to refer himself to the Carrier's Employee Assistance Program and participate in any counseling or treatment program prescribed through the EAP. Failure to comply with the recommendations of the EAP will result in the Claimant's permanent dismissal.

The Claimant is placed on notice that this will be his last opportunity to salvage his career as a Carrier employee.

AWARD:

Claim partially sustained in accordance with the above findings.

  
\_\_\_\_\_  
Charles J. Chamberlain  
Neutral Member

Date January 14, 2003



NOTICE OF INVESTIGATION

October 15, 2002

US MAIL AND CERTIFIED MAIL #7000 1670 0003 4409 8724

Mr. Jesus Unzueta  
14001 S. Western Avenue, Lot #309  
Blue Island, IL 60406


Dear Mr. Unzueta:

You are hereby instructed to attend a formal investigation which will be held on Thursday, October 24, 2002 at 9:00 a.m. in the Office of Director of Engineering, 2067 West 123rd Street, Blue Island, Illinois 60406.

The purpose of 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 on Monday, October 7, 2002. Therefore you are hereby charged with alleged violation of Employee Conduct Rule "Q", Paragraph #1 and Special Instruction #1, Page 1, last paragraph. Your work record, a copy of which is attached, will be reviewed at this investigation.

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.

Yours truly,

  
M. Richardson, Director  
Rock Island Engineering

MR/dm

cc: V. L. Stoner  
W. K. Tupper  
G. Washington  
J. Barton  
C. Cary  
M.S. Wimmer, G/C  
F. Kmiec - L/C  
R. Gage - Please appear as Corporate Witness  
J. Rosales - Please appear as Corporate Witness

20 OCT 20 2002

---LABOR REL---

I hereby acknowledge receipt of the original of this letter.

Signed

Date

NORTHEAST ILLINOIS COMMUTER RAILROAD CORPORATION  
**NOTICE OF DISCIPLINE**

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Name & address of supervisor assessing discipline:

W.K. Tupper  
Chief Engineering Officer  
547 W. Jackson Boulevard  
Chicago, Illinois 60661

November 18, 2002

CERTIFIED MAIL #7000 2510 0009 2865 1043

NOV 20 2002

Mr. Jesus Unzueta  
14001 S. Western Avenue, Lot #309  
Blue Island, IL 60406

LABOR REL

The result of the investigation of October 31, 2002 has revealed your responsibility in connection with the violation of Metra Employee Conduct Rule "Q", Paragraph #1 and Special Instruction #1, Page #1, last paragraph. Therefore you are hereby assessed the following discipline which will also be entered on your personal record:


- ( ) 1. Formal reprimand (letter of particular attached).
- ( ) 2. Three (3) days deferred suspension (with waiver one (1) day deferred) which will remain in effect for two (2) years and must be served as actual suspension if additional discipline is assessed during those years.
- ( ) 3. Five (5) work days actual suspension (with waiver three (3) days plus deferred from Step 2).
- ( ) 3a. Your record indicates a deferred suspension of 3 days which was assessed on \_\_\_\_\_ and must be served in conjunction with discipline outlined above.

Suspension will begin \_\_\_\_\_ and end \_\_\_\_\_. You must return to work on \_\_\_\_\_. Failure to return to work on that date will be treated as an unauthorized absence.

- ( ) 4. Ten (10) work days actual suspension (with waiver seven (7) days).

Suspension will begin \_\_\_\_\_ and end \_\_\_\_\_. You must return to work on \_\_\_\_\_. Failure to return to work on that date will be treated as an unauthorized absence.

- (X) 5. Dismissal. Your employment relationship with this Corporation is terminated and your record closed November 18, 2002. You must immediately return all company property to Moses Richardson, Rock Island District, 2067 W. 123rd Street, Blue Island, IL 60406.**

  
Signature & Title of Supervisor assessing discipline