

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1122

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

NMB Case No. 27

This dispute involves Mr. Frank Kmiec employed by Metra as a Machine Operator.

On October 28, 2002, Mr. Kmiec was operating a Metra Speed Swing machine that was involved in an accident with a Metra vehicle at the Blue Island Yard.

Following the accident, Mr. Kmiec was hand delivered a letter dated November 1, 2002, instructing him to attend a formal investigation on Friday, November 8, 2002, for the purpose of developing the facts, determine the cause and assess responsibility, if any, in connection with his alleged involvement with an accident with Metra Speed Swing #SS50182 and Metra Vehicle #L0837 that caused injury to AC Electrician Michael Pipkin on Monday, October 28, 2002.

Mr. Kmiec was charged with alleged violation of Employee Conduct Rules General Notice II, Paragraphs #1, #2 and #3, "L" Paragraph #1, "N", Paragraph #3, items #1 and #2, General Regulations IV, Paragraph #4 and Safety Rules 1.1, 1.1.2 and 100.1.

The letter of November 1, 2002, is attached to this Award.

The investigation was postponed by mutual agreement between the Carrier and Organization until December 11, 2002, and held on that date.

Following the investigation, Mr. Kmiec was sent a Notice of Discipline letter dated December 30, 2002, advising him that a review of the investigation transcript has resulted in Mr. Kmiec being issued discipline of Five (5) work days actual suspension.

The Letter of Discipline dated December 30, 2002, is attached to this Award.

The transcript of the investigation held on December 11, 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 centers on an incident occurring at the Blue Island Yard on October 28, 2002, when a Metra Vehicle #1.0387 operated by Mr. Richard Patton, a lead electrician, was struck by a Metra Speed Swing machine #SS50182 being operated by Mr. Frank Kmiec, machine operator.

Mr. Patton testified that he and his co-worker, Mr. Michael Pipkin, had finished their work at the old engineering office and picked up all their garbage,

trash and excess material and loaded it into their truck. Mr. Patton then drove his vehicle through the yard to a company dumpster.

Mr. Patton parked his vehicle next to the dumpster and got out and proceeded to throw the garbage into the dumpster.

Mr. Michael Pipkin who was working with Mr. Patton remained in the truck and did not get out of the truck while Mr. Patton was unloading the garbage in the dumpster.

In the process of removing the garbage from his truck, Mr. Patton was standing at the rear of the truck reaching in for the last of the garbage when the truck was struck in front by the Speed Swing being operated by Mr. Kmiec, the claimant in this dispute.

The force of the impact moved the truck back by about 10 feet. Mr. Pipkin, who was sitting in the truck, sustained an injury which required medical attention, and he was taken to the emergency room of a local hospital. Mr. Patton, who was at the rear of his truck, was hit by the tailgate which drove him backwards. Mr. Patton did not sustain any injury according to his testimony.

The investigation transcript contains testimony from Mr. Richard Patton, driver of the Metra truck that was struck in the incident; Mr. Michael Pipkin, passenger in the truck who was injured; Mr. Frank Kmiec, operator of the Speed Swing machine that struck the truck; Mr. Scott Ziarko, Roadway Equipment manager; and Randy Ballard, Work Equipment mechanic.

A review of all of the transcript testimony reveals that there is no dispute as to what occurred in the accident on November 28, 2002.

The issue before us is to determine why the accident occurred and where does the responsibility lie with respect to the parties involved.

In our review of the testimony of Mr. Patton and Mr. Pipkin, there was an accurate account of what they were doing and what transpired. We can find no fault with their actions and testimony as it clearly was in line with a daily routine of work procedures.

There is no evidence of carelessness or negligence on their part. In our review of the testimony of Mr. Kmiec, the operator of the Speed Swing which struck the truck, it is apparent that he attributes the cause to be poor visibility for the operator because of the design of the Speed Swing.

The Organization representative went to great lengths to support that position by referring to numerous photographs of the Speed Swing machine which shows that in some positions of the machine there is limited visibility for the operator.

The Organization likewise endeavored to point out that some of the responsibility lies with lack of adequate Carrier training for operators of the Speed Swing machine.

While there may be some merit to those respective positions, the Board cannot overlook the fact that a serious accident took place that resulted in not only

extensive damage to a Metra truck, but an injury to an employee who required medical treatment.

That leads us to the actions on the part of Mr. Kmiec who was operating the Speed Swing machine. It was his machine that ran into the truck. There is nothing in the record to place blame or responsibility for the accident on anyone other than the operator of the Speed Swing machine.

We cannot accept lack of training or design of the machine as the cause of the accident that occurred.

Mr. Kmiec's personal work record shows that he has been a machine operator on many occasions since his employment in 1997. Mr. Kmiec has had prior experience with numerous types of railway machinery and was considered by the Carrier officials to be a qualified machine operator. The fact that machines can vary in size and types which may require additional instruction from time to time does not alter the fact that all machines require close personal attention whenever they are being operated. If, in fact, Mr. Kmiec considered limited visibility to be a factor, the machine should not have been moved or operated without absolute assurance and protection that it was safe to move without risk to the operator or others in close proximity to the location where the Speed Swing was being operated.

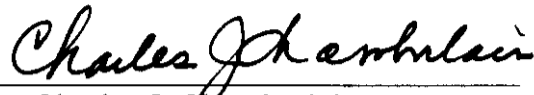
This has been a difficult case to review and assess responsibility as it involves an employee who by his testimony most certainly was sorry and showed remorse for the accident and the injury to a fellow employee. However, we cannot

overlook the fact that the accident did occur and the responsibility for the accident lies with him. The discipline assessed in this dispute is not unreasonable or excessive and should serve as a reminder to the Claimant to be more cautious and careful in the operation of any type of machinery so as to avoid any future accidents.

Accordingly, it is the decision of this Board that there is no basis for changing or altering the discipline assessed Mr. Kmiec of Five (5) work days actual suspension.

AWARD:

Claim denied.



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Charles J. Chamberlain  
Neutral Member

Date March 25, 2003

FILE COPY



NOTICE OF INVESTIGATION

November 1, 2002

HAND DELIVERED.

Mr. Frank R. Kmiec  
3500 W. 60th Place  
Chicago, IL 60629

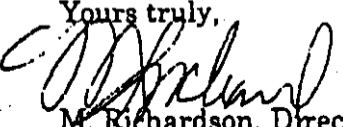
Dear Mr. Kmiec:

You are hereby instructed to attend a formal investigation which will be held on Friday, November 8, 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 involvement with an accident with Metra Speed Swing #SS50182 and Metra Vehicle #L0837 that caused injury to AC Electrician Michael Pipkin on Monday, October 28, 2002. Therefore you are hereby charged with alleged violation of Employee Conduct Rules General Notice II, Paragraphs #1, #2 and #3, "L" Paragraph #1, "N", Paragraph #3, Items #1 and #2, General Regulations IV, Paragraph #4 and Safety Rules 1.1, 1.1.2 and 100.1. 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  
F. R. Kmiec, L/C  
M. S. Wimmer, G/C  
D. Patton - Please appear as Corporate Witness  
M. Pipkin - Please appear as Corporate Witness

Garriet Ex. 1 id  
12-11-02  
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I hereby acknowledge receipt of the original of this letter.

 Signed 11-1-02 Date

JSB

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

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Name & address of supervisor assessing discipline:

--LABOR REL--

3 JAN 03 11 45

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

December 30, 2002

Mr. Frank Kmiec  
3500 W. 60th Place  
Chicago, IL 60629

The result of the investigation of December 11, 2002 has revealed your responsibility in connection with the violation of Metra Safety Rules and Metra Conduct Rules outlined in the letter of investigation dated November 01, 2002. 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.
- (X) 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 Thursday, January 02, 2003 and end Wednesday, January 08, 2003. You must return to work on Thursday, January 09, 2003. If you are furloughed, you must serve five working days after recall.**

- ( ) 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.

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

  
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Signature & Title of Supervisor assessing discipline