

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1122

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

NMB Case No. 29

This dispute involves Mr. Jimmie Harris, Jr. employed by Metra as a B & B Foreman assigned to the LaSalle Street Station.

On December 23, 2002, at about 10:00 a.m., Mr. Harris was notified by Carrier officials to go to the Trainmaster's office at the LaSalle Street Station.

On arrival at the Trainmaster's office, Mr. Harris was met by Mr. Terrill Ross, Specimen Collector for Exemplar International, who advised Mr. Harris that he had been randomly selected for a Federal urine drug test. Mr. Harris was shown a notification letter by Mr. Ross that authorized the urine test. Mr. Harris stated to Mr. Ross that he needed to make a phone call and left the testing area for about ten minutes.

Mr. Ross went looking for Mr. Harris and not being able to find him, advised Janet Carbonelli, Trainmaster, who contacted Mr. Harris by phone and advised him to return to the office.

Mr. Harris returned to the office and went through customary procedures for preparing for the test. Mr. Harris went into the washroom, came out and gave Mr. Ross the sample. On receiving the sample, Mr. Ross noted that the sample

container did not feel warm to his touch and also noted from the temperature strip on the cup that it did not register between the 90 to 100 degree range.

Mr. Ross advised Mr. Harris that he was not getting a temperature reading and that the urine sample did not feel hot or warm.

Mr. Ross advised Mr. Harris that under Federal guidelines, another test must be conducted under observation.

Mr. Harris advised Mr. Ross that he would not give another sample, and he was leaving to go to "547."

Mr. Ross advised Mr. Harris that if he left the site that his action would be considered a refusal.

Mr. Harris left and Mr. Ross notified Trainmaster Janet Carbonelli that Mr. Harris had left and also notified Mr. Arturo Mota, Manager of Drug and Alcohol Program for Metra, and Ms. Goldie Thompson, Mr. Ross's immediate supervisor.

Following the incident occurring on December 23, 2002, Mr. Harris was sent a Certified letter dated December 23, 2002, notifying him that he was being removed from service for alleged refusal of a random (CDL) drug testing December 23, 2002.

The letter is attached to this Award.

On December 27, 2002, Mr. Harris was sent a Certified letter instructing him to attend a formal investigation on Friday, January 3, 2003, for the purpose of developing the facts, determining the cause and assessing responsibility, if any, in connection with your alleged insubordination and dishonesty in allegedly

supplying an adulterated urine sample for random drug screen conducted under Metra Policy Regarding The Use Of Alcohol and Drugs Policy "A". And for alleged refusing to submit to the required test and leaving the test location without authority on Monday, December 23, 2002. Therefore you are hereby charged with alleged violation of Metra Employee Conduct Rules "N", Paragraph #3, Items #3 and #4. Rule Q first paragraph. Metra Policy Regarding The Use Of Alcohol And Drugs Policy "A" Refusal. Your work record, copy of which is attached, will be reviewed at this investigation.

The letter of December 27, 2002, is attached to this Award.

On January 3, 2003, Mr. Harris was sent a letter advising that at the request of the Organization, the investigation scheduled for January 3, 2003, was postponed until January 9, 2003.

The letter of January 3, 2003, is attached to this Award.

On January 7, 2003, Mr. Harris received a letter from Mr. Moses Richardson, Director of Engineering, which revised the original letter of charges dated December 27, 2002.

The Revision of Letter Dated December 27, 2002, is attached to this Award.

The investigation was held on January 9, 2003, recessed and continued on January 13, 2003, until it was concluded.

Following the investigation proceedings, Mr. Harris was sent a Notice of Discipline letter dated January 31, 2003, dismissing him from service effective

January 31, 2003, for violation of Metra Policy Regarding the Use of Alcohol and Drugs – Policy A.

The Notice of Discipline letter dated January 31, 2003, is attached to this Award.

The transcript of the investigation held on January 9 and January 13, 2003, 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 Employes and the Northeast Illinois Regional Commuter Railroad Corporation (Metra) dated November 12, 1999. SBA No. 1122.

FINDINGS:

The transcript of the investigation in this dispute consists of 412 pages of testimony. Volume I pages 1 through 195 contained testimony that took place on January 9, 2003; Volume II pages 196 through 415 contain the testimony that took place on January 13, 2003, when the investigation was concluded.

The Hearing Officer for the investigation was Mr. Joseph Riley, Engineer of Standards for Metra.

At the outset, we consider it appropriate to address the objection raised by Mr. Mark Wimmer, General Chairman for the Brotherhood of Maintenance of Way Employes, who represented Mr. Harris. Mr. Wimmer questioned the Carrier's action in revising the initial letter of December 27, 2002, to Mr. Harris

calling for the investigation and the charges contained therein. The letter of Revision was dated January 7, 2003, and the only charge against Mr. Harris was his alleged failing or refusing to submit to the required random drug screen and leaving the test location prior to conclusion of the test process in violation of Metra Policy Regarding the Use of Alcohol and Drugs – Policy “A”.

The objection was overruled by Mr. Riley, the Hearing Officer. In our review of the two letters from the Carrier to Mr. Harris, it is noted that the only change was removing part of the charges.

The letter of Revision dated January 7, 2003, contained the same charge that was in the original letter of December 27, 2002, and is the only charge on which this dispute is based.

The change did not in any manner alter the facts in this case before us, nor did it prejudice the rights of the Claimant.

Accordingly, the Board concurs with the decision of Hearing Officer Riley on this point.

Volume II of the transcript consists of pages 196 through 415 and details everything that took place at the investigation on January 13, 2003, until it was concluded at 7:15 p.m. on that day.

This Board has spent considerable time in reviewing the voluminous transcript and the testimony of all the individuals who testified at the investigation.

While the testimony of the witnesses was helpful and contributed in some manner to the proceedings, we considered it most important to closely review the

testimony and statements of the two individuals who were involved in the incident, Mr. Terrill Ross, the Collector employed by Exemplar International who was involved in the random collection process, and Mr. Harris, the Claimant who was the Metra employee randomly selected to take the Federal urine drug test.

The testimony of Mr. Ross at the investigation and his signed statement of December 23, 2002, which he produced for the record are consistent. There is no variance in his testimony in the record and his signed statement of December 23, 2002, as to what took place on December 23, 2002. We are attaching the statement of Mr. Ross dated December 23, 2002, to this Award.

The testimony of Mr. Harris in the investigation proceeding reveals some inconsistencies and various reasons given in an attempt to justify his actions on the day of the incident. The Organization went to great lengths to try and support his actions.

Mr. Harris stated in a letter to Mr. V. L. Stoner, Chief Operations Officer, his version of what took place on December 23, 2002, and we quote in part as follows:

Monday 12/23

I was told by another Metra employee that my little friend was here to see me. This employee was making a joke that the urine collector was here to see me again and laughed. I submitted my urine after emptying my pockets. The collector tested the urine and poured it in the two tubes. I called Dave Six and told him that I am sick and I am leaving for the day. I was so frustrated that I did not sign my sample and I left the building. I did witness the collector testing my urine with the test stick and I was not asked to provide a second sample by the collector. I went straight to the Department of Human Services and spoke with investigator Alvin Forbes to file a

complaint for harassment. I do have a letter from him that will verify that I went straight there.

Tuesday 12/24

I received a registered letter from Director Moses Richardson stating that I have been removed from service for the following reason, for alleged refusal of random (CDL) drug testing. That is incorrect.

This complaint of harassment is being filed due to the above stated information. I feel my job and family's livelihood are being threatened. I did not fail to submit a urine sample to the collector on 12/23. I did not sign it out of frustration and humiliation. I called my supervisor, Dave Six and told him I was ill and leaving work.

Jimmie Harris, Jr.

JH/jyh

cc: G. Washington
M. Richardson
M. Whillmer

In addition, on page 404 of the transcript, Mr. Harris in his closing statement to Hearing Officer Riley stated in part as follows:

MR. WIMMER: First we're going to yield – back on record, we're going to yield to anything that Mr. Harris might want to have on any closing remarks.

THE WITNESS: Well, just for the record, and to you, Joe, you know, I've been knowing you for a long time. You know that. And out of frustration and anger, Joe, yeah, I might have – I left that test site, but it wasn't because I had adulterated urine, you know. (Underscore added.)

Mr. Harris admitted that he left the test site in the foregoing testimony.

Mr. Ross has had considerable experience in the Alcohol and Drug Testing Program in his employment with Exemplar International, the independent contractor employed by Metra to conduct its random drug testing program.

Mr. Ross followed regular and customary procedures and took appropriate action in this dispute when the employee involved, Mr. Harris, did not cooperate and chose to walk away from the site after being requested to submit to another urine test because the first urine sample did not register in accordance with normal criteria.

The record is clear that Mr. Harris refused to submit to a second urine test as requested by Mr. Ross and left the testing area.

Mr. Harris was advised by Mr. Ross the consequences of his leaving the testing area and his action would be documented as a refusal to test.

Based on the record before us, it is clear that Mr. Harris violated the Metra Policy Regarding the Use of Alcohol and Drugs - Policy "A" as charged and there is no basis for this Board to overrule the decision of dismissal of Mr. Harris from service with the Carrier.

AWARD:

Claim denied.

Charles J. Chamberlain

Charles J. Chamberlain
Neutral Member

Date April 22, 2003

EXHIBIT

To whom it may concern regarding a Federal drug collection on Metra employee, Jimmie Harris, Jr. # 6806, at LaSalle Street Station in Chicago, Illinois:

Following is a summary of the events that took place during the collection procedures of Chain of Custody # 5953626.

I secured all water sources and put a bluing agent in the toilet. I ensured that no soap, disinfectants, cleaning agents, or other possible adulterants were present. I removed the trash container and posted a "Do Not Enter Testing in Progress" sign on the bathroom door. I introduced myself to donor in a private room and asked to see a photo identification. I told donor that he was randomly selected for a Federal drug test. Donor opened his cellular phone and stated he needed to make a telephone call. At that time donor left the testing area without my permission. Donor could not be found for approximately ten minutes by myself or Metra trainmaster, Janet Carbonelli. Janet Carbonelli finally reached donor on the radio and asked him to return to testing room. I directed donor to empty his pockets and to display all contents upon his return to testing room. Donor told me he would produce a sample

but wouldn't sign any paperwork. I instructed donor to wash and dry hands and to select a collection cup. I asked donor to provide a urine specimen of at least 45mls. I instructed donor not to flush the toilet after completing the void. After donor completed the void and handed me the cup, I immediately checked the temperature which was not in an acceptable range; the collection cup was cold to my touch. I notified donor that his specimen was cold and would have to conduct another collection using direct observation procedures. Donor watched me pour the urine specimen into the two collection bottles and stated he was not going to give a second specimen. The donor then stated that he was going to Metra's headquarter at 547 W. Jackson, Chicago, IL. I told donor that if he leaves before testing is completed, it would be documented as a refusal to test. The donor told me that he was leaving and left the testing area. I then processed the collection according to Federal Guidelines and notified all proper authorities.

Terrill Ross (collector)

Terrill Ross

December 23, 2002



LABOR REL--

100 02 13 52

December 23, 2002

Certified Mail #7000 1670 0003 4409 8946

Mr. Jimmie Harris Jr.
9318 S. Phillips
Chicago, IL 60617

Dear Mr. Harris:

You are hereby removed from service for alleged refusal of random (CDL) drug testing December 23, 2002. Formal Charges are pending.

Sincerely,


M. Richardson, Director
Rock Island Engineering.

RCS/MR: ls

cc: V.L. Stoner
W.K. Tupper
G. Washington
J. Barton
C. Cary
H. Granier
T. Petty



NOTICE OF INVESTIGATION

December 27, 2002

US MAIL AND CERTIFIED MAIL #7001 2510 0009 2865 0886

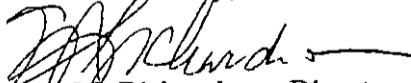
Mr. Jimmie Harris Jr.
9318 S. Phillips
Chicago, IL 60617

Dear Mr. Harris:

You are hereby instructed to attend a formal investigation which will be held on Friday, January 03, 2003 at 12:30 p.m. in the Office of Director of Engineering, 2067 W. 123rd Street Blue Island, IL. The purpose of this investigation is to develop the facts, determine the cause and assess responsibility, if any, in connection with your alleged insubordination and dishonesty in allegedly supplying an adulterated urine sample for random drug screen conducted under Metra Policy Regarding The Use Of Alcohol and Drugs Policy "A". And for alleged refusing to submit to the required test and leaving the test location without authority on Monday, December 23, 2002. Therefore you are hereby charged with alleged violation of Metra Employee Conduct Rules "N", Paragraph #3, Items #3 and #4. Rule Q first paragraph. Metra Policy Regarding The Use Of Alcohol And Drugs Policy "A" Refusal. Your work record, 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. Wimmer, G/C
J. Carbonelli - Please appear as Corporate Witness
T. Fowler - Please appear as Corporate Witness
A. Mota - Please appear as Corporate Witness

I hereby acknowledge receipt of the original of this letter.

Signed _____ Date _____

Memorandum



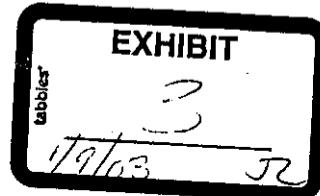
OFFICE OF DIRECTOR OF ENGINEERING

2067 W. 123rd Street

Blue Island, IL 60406

January 3, 2003

Mr. Jimmie Harris, Jr.
9318 S. Phillips
Chicago, IL 60617



Dear Mr. Harris:

Per General Chairman Wimmer's request, the investigation scheduled for 12:30 p.m. Friday, January 3, 2003 in the Office of Director of Engineering, 2067 W. 123rd Street, Blue Island, IL is postponed until Thursday, January 9, 2003 at 9:00 a.m. with all other details as shown in Notice of Investigation dated December 27, 2002 unchanged.

Sincerely,

M. Richardson, Director
Rock Island Engineering

MR/dm

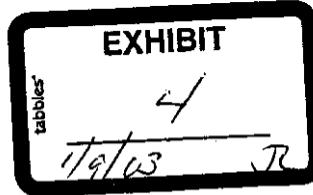
cc: V. L. Stoner
W. K. Tupper
J. Barton
G. M. Washington
C. Cary
M. S. Wimmer, G/C
F. Kmiec, L/C
J. Carbonelli
T. Fowler
A. Mota



NOTICE OF INVESTIGATION
REVISED NOTICE

January 7, 2003

Mr. Jimmie Harris Jr.
9318 S. Phillips
Chicago, IL 60617



RE: REVISION OF LETTER DATED DECEMBER 27, 2002

Dear Mr. Harris:

You are hereby instructed to attend a formal investigation which will be held on Friday, January 03, 2003 at 12:30 p.m. in the Office of Director of Engineering, 2067 W. 123rd Street Blue Island, IL. The purpose of this investigation is to develop the facts, determine the cause and assess responsibility, if any, in connection with you allegedly failing or refusing to submit to the required random drug screen and leaving the test location prior to conclusion of the test process, in violation of the Metra Policy Regarding the Use of Alcohol and Drugs - Policy "A", on Monday, December 23, 2002. Therefore you are hereby charged with alleged violation of Metra Policy Regarding the Use of Alcohol and Drugs Policy "A". Your work record, 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. Wimmer, G/C
J. Carbonelli - Please appear as Corporate Witness
T. Fowler - Please appear as Corporate Witness
A. Mota - Please appear as Corporate Witness

I hereby acknowledge receipt of the original of this letter.

Signed _____ Date _____

NORTHEAST ILLINOIS COMMUTER RAILROAD CORPORATION
NOTICE OF DISCIPLINE

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Awd 29
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Name & address of supervisor assessing discipline:

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

--LABOR REL--

5 FEB 03 12 17

January 31, 2003

Mr. Jimmie Harris
9318 S. Phillips
Chicago, IL 60617

The result of the investigation of January 9 and continued on January 13, 2003 has revealed your responsibility in connection with the violation of Metra Policy Regarding the Use of Alcohol and Drugs - Policy A. Therefore you are hereby assessed the following discipline which will also be entered on your personal record:

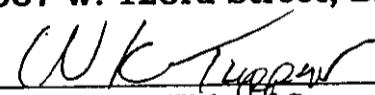
- 1. Formal reprimand (letter of particular attached).
- 2. Three (3) days deferred suspension (with waiver one (1) day deferred) which will remain in effect for two (2) years and must be served as actual suspension if additional discipline is assessed during those years.
- 3. Five (5) work days actual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

- 5. Dismissal. Your employment relationship with this Corporation is terminated and your record closed January 31, 2003. 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