

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1122

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

NMB Case No. 30

This dispute involves Mr. Michael Asher, Machine Operator for Metra, who was the Claimant in NMB Case No. 28 which was recently before this Board for adjudication.

In NMB Case No. 28, Mr. Asher was charged by the Carrier for violation of Carrier Rules for his unauthorized use of Metra's time and Vehicle #91061 in spreading salt in a parking lot at an apartment complex at 11020 through 11032 S. 76th Avenue in Palos Hills, Illinois, on Tuesday, January 14, 2003.

In NMB Case No. 28, this Board, after a review of the transcript record in that case, rendered a decision on April 11, 2003, which upheld the Carrier's decision to dismiss Mr. Asher from service. Mr. Asher was dismissed from service effective February 7, 2003.

The instant dispute initiated by the Carrier on February 7, 2003, involves a charge against Mr. Asher for dishonesty in giving false information at the investigation on January 30, 2003, concerning the route of the company vehicle Mr. Asher was driving when entering the parking lot of the apartment complex at 11020 through 11032 S. 76th Avenue in Palos Hills, Illinois, on January 14, 2003.

This Board in our decision in NMB Case No. 28 gave great weight to the testimony of Mr. Cashman, the witness who observed Mr. Asher and Metra truck #91061 which he was driving in the apartment complex on January 14, 2003.

Mr. Cashman's testimony in the record of NMB Case No. 28 describing the activities of the truck was clear and precise as to what took place.

Mr. Asher's testimony differed from Mr. Cashman's testimony on other points such as the spreading of salt, as well as, how he entered the complex with his truck.

The Board took note of the testimony of Mr. Asher concerning a rear entrance to the apartment complex from the bowling alley on Southwest Highway.

The Board also noted the testimony of Martin DeVito, a fellow employee who resides in the apartment complex where Mr. Asher was observed by Mr. Cashman spreading salt with Metra Vehicle #91061.

Mr. DeVito initially testified that there was no rear entrance to the parking lot of the apartment complex from the bowling alley; however, he changed his story in further questioning by the Organization Representative.

It was on this point that the Carrier took note and made an investigation of the site at the apartment complex and found that there is no rear entrance to the apartment complex parking lot from the bowling alley which gave rise to the dispute before us in NMB Case No. 30.

It is clear from the testimony of Mr. Asher in this dispute that he was dishonest in his testimony at the investigation held on January 30, 2003, as charged by the Carrier.

It is clear that the record in this dispute reaffirms the decision of the Board in NMB Case No. 28 wherein we upheld the decision of the Carrier to dismiss Mr. Asher from service based on the credible testimony of Mr. Cashman, the witness, and the inconsistencies in the testimony of Mr. Asher and Mr. DeVito, the fellow employee who testified at the January 30, 2003, investigation.

For the record, we are attaching the letter of February 7, 2003, calling for the investigation in this dispute and also the letter of March 3, 2003, dismissing Mr. Asher from service.

The transcript of the investigation held on February 14, 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 Employees and the Northeast Illinois Regional Commuter Railroad Corporation (Metra) dated November 12, 1999. SBA No. 1122.

FINDINGS:

Based on the foregoing, it is the decision of this Board that the claim in this dispute be denied which is consistent with our decision of April 11, 2003, in NMB

Case No. 28, upholding the decision of the Carrier in dismissing Mr. Asher from service effective February 7, 2003.

AWARD:

Claim denied.

Charles J. Chamberlain

Charles J. Chamberlain
Neutral Member

Date May 6, 2003

547 W. Jackson Blvd.

Chicago, Illinois 60661

Telephone: 312-322-6900

TTY# 1-312-322-6774

NOTICE OF INVESTIGATION

February 7, 2003

CERTIFIED MAILED #7000 1670 0003 4410 1271

Mr. Michael R. Asher #6428
2839 Greene,
Lake Station, IN 46405

Dear Mr. Asher,

You are hereby instructed to attend a formal investigation that will be held in the office of the Director of Engineering, Rock Island District, 2067 W. 123rd Street, Blue Island, Illinois, on February 14, 2003 at 9:00 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 dishonesty during an investigation held on January 30, 2003, when you allegedly gave false information concerning the route by which the company vehicle you were driving entered the parking lot of an apartment complex at 11020 through 11032 S. 76th Avenue in Palos Hills, Illinois on January 14, 2003.

In connection, therewith, you are charged with the alleged violation of Metra Employee Conduct Rule N-Item 4, "Employees must not be dishonest".

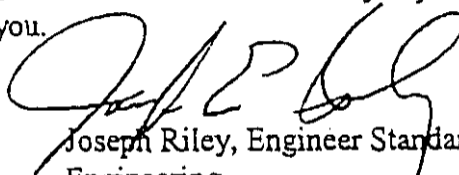
Your personal work record will be reviewed at this investigation. (Copy attached)

You may be represented at this investigation as provided for in your labor agreement, and your representative will be given the opportunity to present evidence and testimony in your behalf and to cross examine any witnesses testifying against you.

G/C H. J. Granier
L/C T. P. Petty

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

Larry Powell, General B&B Supervisor - Please arrange to appear as company witness


Joseph Riley, Engineer Standards
Engineering

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JSB
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

March 3, 2003

CERTIFIED MAIL #7001 2510 0009 2865 0992

Mr. Michael R. Asher
2839 Greene
Lake Station, IN 46405

The result of the investigation of February 14, 2003 has revealed your responsibility in connection with the violation of Metra Employee Conduct Rule "N", Item #4. 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.

- (X) 5. Dismissal. Your employment relationship with this Corporation is terminated and your record continued closed March 3, 2003. You must immediately return all company property to Moses Richardson, Rock Island District, 2067 W. 123rd Street, Blue Island, IL 60406.**

W.K. Tupper CEO
Signature & Title of Supervisor assessing discipline