

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1122

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

NMB Case No. 32

This dispute involves Mr. Eugene Howell employed by Metra as an Assistant B & B Supervisor.

Mr. Howell received a letter dated December 23, 2002, from Mr. W. T. Archer, M/E Engineering Department, requesting that he attend a formal investigation to be held on Friday, December 30, 2002, for the purpose of developing the facts, determine the cause, and assess responsibility, if any, in connection with an alleged altercation between Mr. Howell and B & B Assistant Foreman, Curtis Streeter, on Friday, December 13, 2002. Mr. Howell was charged with possible violation of Metra Employee Conduct Rule No. N.

The letter of December 23, 2002, is attached to this Award.

The investigation was postponed and subsequently held on March 12, 2003.

Following the investigation, Mr. Howell received a Notice of Discipline letter dated April 1, 2003, dismissing him from service effective that same day, for violation of Carrier rules in connection with his altercation with Mr. Streeter on December 13, 2002.

The Notice of Discipline letter dated April 1, 2003, is attached to this Award.

The transcript of the investigation held on March 12, 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:

In our review of the record in this case, we find that the incident which gave rise to the dispute occurred on December 13, 2002, at a party which was attended by several Metra employees, but was not sponsored by Metra or held on Metra property. The incident between Mr. Howell and Mr. Streeter occurred after they exchanged words at the party and went outside at the location where the party was being held. At that point, there was physical contact between the two, and Mr. Streeter was cut by a knife used by Mr. Howell.

The record shows that between the dates of December 23, 2002, when Mr. Howell was charged, and the date of the investigation on March 12, 2003, the Carrier conducted two fact-finding reviews in connection with the same incident. The fact-finding process, which was related to Mr. Howell's status as a supervisory officer, included hearings on January 7 and February 14, 2003. The

transcripts from both hearings were submitted for the record in connection with the investigation held on March 12, 2003. That record provides the basis for our adjudication of this dispute.

The Board has reviewed the record before us and the testimony of Mr. Howell, Mr. Streeter and the other witnesses who appeared at the investigation. There are different versions of what took place, but there is no dispute that there was a serious altercation between Mr. Howell and Mr. Streeter on December 13, 2002. The record indicates, in fact, that there had been a serious conflict between Mr. Howell and Mr. Streeter for some time, which is not conducive to good working relationships between employees; nor is it good for their employer, which cannot and should not condone such animosity and friction between employees. Certainly, the incident in the instant case, while it was off the property and on the employees' personal time, adversely reflects on Metra.

Mr. Howell was the only employee charged in this incident, but it is apparent that Mr. Streeter shares responsibility for what occurred. Both individuals showed very poor judgment by placing themselves in a situation where it was virtually certain that an altercation would occur. Based on the record, the Board is unable to determine whether one employee or the other was the instigator, but the Board can decide without fear of contradiction that both employees were involved in a serious altercation and that both employees could have prevented the situation from escalating into a physical confrontation. Accordingly, it is clear that Mr. Howell did engage in an altercation, as charged.

The only remaining question before the Board, therefore, is whether Mr. Howell should be permanently dismissed for his part in this altercation. While we cannot lose sight of the seriousness of the altercation, the Board finds that there are circumstances in this case that point toward mitigation of the punishment. First, Mr. Howell is a long time employee and has a relatively clean record with no instances of similar conduct in the past. Second, the record shows that Mr. Streeter shared the blame for what occurred. Under the circumstances, justice would not be served by placing responsibility on Mr. Howell alone and terminating his career.

Accordingly, the Board directs that Mr. Howell be returned to service with his seniority and all other rights unimpaired, but with no compensation for lost time. This decision should serve as a reminder to Mr. Howell and Mr. Streeter that they will face severe consequences if there are any further incidents of this type.

AWARD:

Partially sustained in accordance with the above findings.



Charles J. Chamberlain
Neutral Member

Date May 21, 2003



Metra KYD Facility
12301 S. Indiana Avenue
Chicago, IL 60628

December 23, 2002

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--LASH RE--

Eugene Howell Emp. #2773
11227 S. King Drive
Chicago, IL 60628
FED EX #823686995179

U. S. MAIL

Dear Sir:

Arrange to attend a formal investigation to be held in the KYD Conference Room, 12301 S. Indiana Avenue, Chicago, IL 60628, at 9:00 a.m., Monday, December 30, 2002.

The purpose of this investigation is to develop the facts, determine the cause, and assess responsibility, if any, in connection with an alleged altercation between yourself and B&B Asst. Foreman, Curtis Streeter, on Friday, December 13, 2002.

In connection therewith, you are charged with possible violation of Metra Employee Conduct Rule No. N.

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.

Your past personal record may be reviewed at this investigation (copy attached).

Sincerely,

A handwritten signature in dark ink, appearing to read "W. T. Archer", is written over the typed name.

W. T. Archer

M/E Engineering Department

Attachment

cc: V. L. Stoner	G. Washington
W. K. Tupper	P. Connors
R. C. Schuster	H. J. Granier, G/C
C. Cary	T. P. Petty, L/C
J. Barton	R. Hooker, L/C
D. Mogan	F. Leonard

P. Bailey) Please arrange to attend as a witness.
C. Streeter) " " " " " " "



NORTHEAST ILLINOIS REGIONAL COMMUTER RAILROAD CORP.

NOTICE OF DISCIPLINE

FEDEX TRACKING NUMBER:
832533669675

W. K. Tupper, Chief Engineering Officer

SUPERVISOR ASSESSING DISCIPLINE

547 W. Jackson Blvd. 7th Floor

WORK LOCATION

April 1, 2003

DATE

Eugene Howell - Emp. No.: 2773

EMPLOYEE NAME (TYPE OR PRINT)

☒ Formal Investigation ☐ Waiver of Formal Investigation (check proper box) has indicated your responsibility for violation of NIRCRC Rules in the following incident (describe):

Your altercation with B&B Assistant Foreman, Curtis Streeter, on Friday, December 13, 2002.

Therefore, you are assessed the following discipline which will also be entered into your personal employment record (check appropriate box or boxes). **DISMISSAL**

☐ **1. Formal reprimand** (letter attached).

☐ If you waive investigation, the reprimand letter will be effective for one year.

☐ **2. Three days deferred suspension** [this suspension will remain deferred for 2 years and will be served as actual suspension if further discipline is assessed during that period.]

☐ If you waive investigation, one day of deferred suspension is assessed instead of three days.

☐ **3. Five days actual suspension.**

- ☐ If you waive investigation, three days of suspension will be served instead of five days, plus the deferred days from Step 2.
- ☐ Your record indicates deferred suspension of _____ days which was assessed on _____ and must be served in conjunction with discipline noted above.

☐ **4. Ten days actual suspension.**

- ☐ If you waive investigation, seven days of suspension will be served instead of ten days.

☐ **5. Period of Suspension (if applicable).**

Suspension from your job assignment will begin on _____ and will end _____ . You must return to work on _____. Failure to return on that date will be regarded as an unauthorized absence.

.....

XX 6. Dismissal. Your employment with this corporation is terminated effective April 1, 2003 (date). You must immediately return all company property.

9:00 AM
Time

4/1/03
Date

William K. Zupar *Chief of Police*
Signature & title of Supvr assessing discipline

Employee

Union Witness

cc: Metra Personnel