

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1122

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

NMB Case No. 35

This dispute involves Mr. Walter J. Marusiak employed by Metra as an Assistant Track Foreman.

On October 2, 2003, the date of the incident involved in this dispute, Mr. Marusiak was assigned to work at a grade crossing project at Central Avenue.

Mr. Marusiak was a qualified machine operator and was assigned to operate a Hitachi backhoe machine.

The work involved B&B, Track and Signal forces numbering between 20 and 30 employees.

While working on the project, it was alleged by a Carrier Supervisor that Mr. Marusiak was observed not wearing personal protective equipment as required by Carrier Rules.

On October 9, 2003, Mr. Marusiak was sent a Certified letter instructing him to attend a formal investigation on Thursday, October 16, 2003, for the purpose of developing the facts, determining the cause and assess responsibility, if any, in connection with his alleged failure to wear personal protective equipment on Thursday, October 2, 2003, at the Central Avenue crossing.

Mr. Marusiak was charged with alleged violation of Engineering Department Special Instruction No. 7, Concerning Protective Gear, Item No. 1, Paragraph A.

The Notice of Investigation letter of October 9, 2003, is attached to this Award.

The investigation was postponed by mutual agreement between the parties until January 8, 2004, and was held on that date.

Following the investigation, Mr. Marusiak received a Notice of Discipline letter dated January 27, 2004, assessing discipline of Three (3) work days deferred suspension for violation of the Carrier Rules as charged.

The Notice of Discipline letter is attached to this Award.

The transcript of the investigation held on January 8, 2004, 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:

What the Board finds particularly noteworthy in the Case is the testimony of Mr. John Meyer, Signal Supervisor Metra Milwaukee District North Line, and Mr. Dick Nys, B&B Supervisor, Milwaukee District.

Both Carrier officials were present on the day of the incident (October 2, 2003) at the road crossing rehab project at Central Avenue.

Mr. Meyer testified that there were 20 to 30 Metra employees working at the location, and he observed that the Claimant in this dispute, Mr. Wally Marusiak, did not have his hardhat on.

Mr. Meyer testified that he approached Mr. Marusiak three times and told him to put on his hardhat. Mr. Marusiak did not respond to Mr. Meyer and did not put on his hardhat.

Mr. Nys arrived at the location, and Mr. Meyer advised him that Mr. Marusiak did not have his hardhat on. Mr. Nys observed that Mr. Marusiak did not have his hardhat on and requested him to put it on. Mr. Marusiak complied with Mr. Nys' request.

In its defense of Mr. Marusiak, the Organization went to great lengths to make a point that there were contractor forces working at the crossing who were not wearing protective gear. Mr. Meyer and Mr. Nys testified that the contractor force consisted of truck drivers who were hauling away material. They further testified that contractor employees are not required to wear protective gear unless they encroach within four feet of the railroad property.

Mr. Marusiak in his personal testimony as to what transpired between Mr. Meyer and himself repeatedly stated that he did not recall for sure what actually took place on that day. Mr. Marusiak did recall that Mr. Nys approached him and told him to put on his hardhat and he complied.

There is nothing in the transcript testimony of all who testified that refuted the testimony of Mr. Meyer and Mr. Nys.

Both Carrier witnesses testified that Mr. Marusiak did not have his hardhat on and did not put it on until requested to do so by Mr. Nys.

Mr. Marusiak was charged with violation of Carrier Rule Engineering Department Special Instruction No. 7, Concerning Protective Gear, Item No. 1, Paragraph A.

The record clearly supports the Carrier's charge that Mr. Marusiak was not wearing appropriate personal protective equipment on October 2, 2003.

The Organization made note of the fact that Mr. Meyer was a Signal Supervisor, and since Mr. Marusiak was a B&B employee, Mr. Meyer had no authority to direct the activities of Mr. Marusiak.

Compliance with Carrier Safety Rules is of utmost importance to the Carrier and employees of the Carrier. If any employee working for the Carrier is observed by any Carrier official or fellow employee not complying with any Safety Rule, they have the responsibility to request the offender to comply. Enforcement of Carrier Safety Rules is not confined to the department of the Carrier for whom they may be working. Mr. Meyer, a Signal Department Official, had authority to tell Mr. Marusiak to put on his hardhat.

Based on the record in this dispute, it is clear that Mr. Marusiak violated the rule as charged by the Carrier.

There is no basis for this Board to overrule the discipline assessed.

Accordingly, the Claim is denied.

AWARD:

Claim denied.

Charles J. Chamberlain

Charles J. Chamberlain
Neutral Member

Date April 23, 2004

NORTHEAST ILLINOIS RAILROAD CORPORATION

Milwaukee District Engineering
2931 West Chicago Avenue
Chicago, Illinois 60622

NOTICE OF INVESTIGATION

October 9, 2003

CERTIFIED MAIL #7001 0360 0000 2765 8151 & U.S. MAIL
Mr. W. Marusiak, #6608

You are hereby instructed to attend a formal investigation which will be held in the office of the Director of Engineering, Milwaukee District, 2931 W. Chicago Ave, Chicago, Illinois 60622, Thursday, October 16, 2003 at 9:00 a.m.

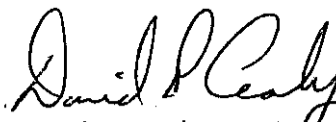
The purpose for this investigation is to develop the facts, determine the cause and assess responsibility, **if any**, in connection with your alleged failure to wear personal protective equipment on Thursday, October 2, 2003 at Central Avenue Crossing.

In connection therewith you are charged with alleged violation of the following rule(s):
Engineering Department Special Instruction No. 7, Concerning Protective Gear, Item No. 1, Paragraph A.

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. 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-BMWE-Wimmer
L/C-BMWE-Kmiec
V. L. Stoner
W. K. Tupper
R. C. Schuster
G. Washington
P. Connor
J. Barton
C. Cary
L. R. Nys-----Please arrange to appear as a company witness
J. Pizano-----Please arrange to appear as a company witness



David P. Leahy, Maintenance Engineering Supervisor
Milwaukee District Engineering

3 OCT 03 3:41

LABOR REL--

NORTHEAST ILLINOIS REGIONAL COMMUTER RAILROAD CORPORATION
MILWAUKEE DISTRICT ENGINEERING DEPARTMENT
2931 W. CHICAGO AVE., CHICAGO, ILLINOIS 60622

--LABOR REL--

NOTICE OF DISCIPLINE

23 JAN 04 3:50 W. Marusiak, #6608 Spaulding David P. Leahy
Employee Name Work Location Supervisor assessing discipline

DATE: January 27, 2004

X FORMAL INVESTIGATION SCHEDULED FOR OCTOBER 16,
2003, POSTPONED AND HELD ON JANUARY 8, 2004

WAIVER OF INVESTIGATION

Charge: Failure to wear personal protective equipment on Thursday, October 2, 2003 at Central Avenue Crossing.

Rule(s) Violation: Engineering Department Special Instruction No. 7, Concerning Protective Gear, Item No. 1, Paragraph A

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

<u>Formal</u>	<u>Waiver</u>
<input type="checkbox"/> 1. Formal Letter of Reprimand (effective for two years)	<input type="checkbox"/> 1. Formal Letter of Reprimand (effective for one year)
<input checked="" type="checkbox"/> 2. Three (3) work days deferred suspension	<input type="checkbox"/> 2. One (1) work day deferred suspension
<input type="checkbox"/> 3. Five (5) work days suspension plus the deferred days from step two (2)	<input type="checkbox"/> 3. Three (3) work days suspension plus the deferred days from step two (2). During your suspension, you are expected to contact the EAP Coordinator at 1.800.227.8620 or 312.726.8620.
<input type="checkbox"/> Your record indicates a deferred suspension of ___ day(s) was assessed on _____ and must be served in conjunction with discipline outlined above. As a result, suspension will begin _____ and end _____. You must return to work on _____. Failure to return on that date will be treated as an unauthorized absence.	
<input type="checkbox"/> 4. Ten (10) work days suspension	<input type="checkbox"/> 4. Seven (7) work days suspension
As a result, suspension will begin _____ and end _____. You must return to work on _____. Failure to return on that date will be treated as an unauthorized absence.	

<input type="checkbox"/> 5. Dismissal	<input type="checkbox"/> 5. Dismissal
<input type="checkbox"/> Your employment with this Corporation is terminated effective _____. You must return all company property..	
<input type="checkbox"/> DEVIATION FROM THE PROGRESSIVE DISCIPLINE STEPS The Chief Operations Officer has determined that the discipline of Step # ____ shall be assessed based on the circumstance in this case for the reason(s) stated below:	

11:15 AM
Time

27 JAN 04
Date

David P. Leahy
Supervisor Assessing Discipline David P. Leahy,
Maintenance Engineering Supervisor

Time

Date

Charged Employee-W. Marusiak

Time

Date

Union Representative

Time

Date

Witness

cc: V. Stoner
R. C. Schuster
W. K. Tupper
G. Washington
C. Cary
P. Connor
J. Barton
GC-BMWE - WIMMER
LC-BMWE- KMIEC