

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1122

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

NMB Case No. 4

This case involves Mr. Dewon Westbrooks who is employed by Metra as a B & B Mechanic.

Mr. Westbrooks' work location was at Western Ave. with assigned hours from 7:00 a.m. until 3:30 p.m.

On August 25, 2000, Mr. Westbrooks was hand delivered a letter from Mr. Lawrence C. Powell, Maintenance Engineering Supervisor, instructing Mr. Westbrooks to attend an investigation on August 31, 2000, for the purpose of developing the facts, determine the cause and assess responsibility, if any, in connection with alleged failure to properly protect his position as B & B Mechanic due to allegedly leaving early on August 24, 2000, at Western Ave. Mr. Westbrooks was charged with alleged violation of Metra Employee Conduct Rule Q. The letter of August 25, 2000, is attached to this Award.

The investigation was postponed until September 13, 2000, and was held on that date.

Following the investigation, Mr. Westbrooks received a Certified letter dated September 29, 2000, advising that he had been assessed discipline of (3) Three Days Deferred Suspension for violation of Metra Employee Conduct Rule

Q. and Engineering Department Special Instruction No. 1, concerning Metra's Engineering Department Attendance Policy.

The letter of September 29, 2000, is attached to this Award.

The transcript of the investigation held on September 13, 2000, 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:

Mr. Westbrooks was charged with leaving work early on August 24, 2000.

The testimony of two Carrier witnesses allege that Mr. Westbrooks was observed leaving his headquarters at 3:24 p.m. One Carrier witness testified that the time was 3:28 p.m.

Mr. Westbrooks' Foreman testified that as far as he knew, Mr. Westbrooks and others left at the quitting time of 3:30 p.m.

Mr. Westbrooks testified that he and others left at 3:30 p.m. according to a clock at his headquarters.

The testimony reveals that clocks are placed at various places at the headquarters; most of which are battery operated.

Testimony further reveals that most of the clocks vary with time range from one to two minutes. Mr. Powell testified that they are not always accurate and employees should periodically check their watches with a standard clock or the dispatcher whose time is accurate.

It is quite evident from our review of the transcript that this dispute contains testimony of different individuals all of whom have different versions of what time it was when Mr. Westbrook left work on August 24, 2000.

While we can understand the importance of all employees complying with and fulfilling their obligation to work their assigned work hours, we have difficulty in upholding disciplinary action against one employee when there are conflicting opinions as to what the exact time was when he departed the premises along with others employed at the same location.

It is apparent that there is a need for change in the procedures that are currently being used to log starting time and departure time at the location in question so as to avoid further instances such as we have in this instant case.

Based on the record before us, it is our decision that there is no basis for upholding the discipline assessed Mr. Westbrook in this case. The discipline of (3) Three Days Deferred Suspension should be rescinded and Mr. Westbrook's record cleared of the charge.

AWARD:

Claim sustained.

Charles J. Chamberlain

Charles J. Chamberlain

Neutral Member

Date December 29, 2010

NORTHEAST ILLINOIS RAILROAD CORPORATION

Milwaukee District Engineering
2931 West Chicago Avenue
Chicago, Illinois 60622

NOTICE OF INVESTIGATION

August 25, 2000

HAND DELIVERED

Mr. D. Westbrooks, B&B Mechanic
Western Ave

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, on Thursday, August 31, 2000 at 9:00 AM.

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 properly protect your position as B&B Mechanic due to you allegedly leaving early on August 24, 2000, at Western Ave.

In connection therewith you are charged with alleged violation of the following Metra Employee Conduct Rule, Rule Q. "Employees must report at the appointed time, devote themselves exclusively to their duties, must not absent themselves, nor exchange duties with, or substitute others in their place, without proper authority." And Engineering Department Special Instruction No. 1 concerning Metra's Engineering Department Attendance Policy.

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.

LCP/lcp



Lawrence C. Powell, Maintenance Engineering Supervisor
Milwaukee District Engineering

G/C BMWE

L/C BMWE

V. L. Stoner

W. K. Tupper

R. C. Schuster

G. Washington

H. Thomas

J. Barton

C. Cary

L. Powell, Engineering Supervisor ----- Please arrange to appear as company witness

M. Krobe, Timekeeper ----- Please arrange to appear as company witness

M. Hatchett, Steno Clerk ----- Please arrange to appear as company witness

NORTHEAST ILLINOIS RAILROAD CORPORATION

Milwaukee District Engineering
2931 West Chicago Avenue
Chicago, Illinois, 60622

Results of Investigation

Certified Mail/Hand Delivered

Mr. D. Westbrook
B&B Mechanic

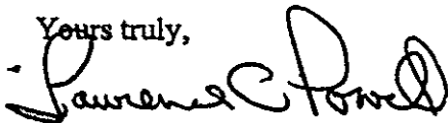
September 29, 2000

A review of the transcript of the investigation, scheduled for August 31, 2000 and postponed until September 13, 2000, has resulted in the following discipline being issued. Which will be placed on your record as outlined in the progressive discipline policy.

RULE VIOLATIONS: Metra Employee Conduct Rule Q and Engineering Department Special Instruction No. 1, concerning Metra's Engineering Department Attendance Policy

DISCIPLINE: See attached Notice of Discipline for (3) THREE DAYS DEFERRED SUSPENSION

Yours truly,



Lawrence C. Powell, Maintenance Engineering Supervisor
Milwaukee District Engineering
(312) 322-4118

LCP/lcp

cc: G/C-BMWE
L/C-BMWE
V. L. Stoner
W. K. Tupper
R. C. Schuster
G. Washington
H. Thomas
J. Barton
C. Cary

NORTHEAST ILLINOIS REGIONAL COMMUTER RAILROAD CORPORATION

NOTICE OF DISCIPLINE

D. Westbrooks

Western Ave.

Lawrence C. Powell

Employee Name

Work Location

Supervisor assessing discipline

DATE: September 29, 2000

☒ **FORMAL INVESTIGATION**
SCHEDULED FOR AUGUST 31, 2000
POSTPONED TO SEPTEMBER 13, 2000

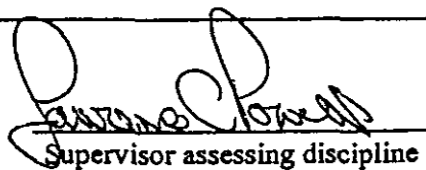
WAIVER OF INVESTIGATION

Has indicated your responsibility in connection with the violation of Metra Employee Conduct Rule, Rule Q. And Engineering Department Special Instruction No. 1 concerning Metra's Engineering Department Attendance Policy, when you failed to properly protect your position as B&B Mechanic by leaving early, on August 24, 2000, at Western Ave. Therefore, you are hereby assessed the following discipline which will also be entered on your personal record:

<i>Formal</i>	<i>Waiver</i>
1. Formal Letter of Reprimand (effective for two years)	1. Formal Letter of Reprimand (effective for one year)
☒ 2. Three (3) work days deferred suspension	2. One (1) work day deferred suspension
3. Five (5) work days suspension plus the deferred days from step two (2)	3. Three (3) work days suspension plus the deferred days from step two (2)
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.	
4. Ten (10) work days suspension	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.	
5. Dismissal	5. Dismissal
Your employment with this Corporation is terminated effective _____. You must return all company property.	

Employee

Union Witness


Supervisor assessing discipline

cc: Metra Personnel