

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1122

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

NMB Case No. 41

This dispute involves Mr. Salvador Romero employed by Metra as a Machine Operator at Roundout Headquarters.

On September 14, 2004, Mr. Romero received a letter instructing him to attend a formal investigation on Wednesday, September 22, 2004, at 9:00 a.m. for the purpose of developing the facts, determining the cause and assess responsibility, if any, in connection with his alleged carelessness while operating a speed swing on September 7, 2004, which resulted in the striking of an automobile in the rear and causing damage to that vehicle.

Mr. Romero was charged with alleged violation of the following Metra Employee Conduct Rule N, Paragraph No. 3, Item Nos. 1 and 2.

The letter of September 14, 2004, is attached to this Award.

At the request of the Organization, the investigation was postponed until October 1, 2004, and was held on that date.

Following the investigation, Mr. Romero received a Notice of Discipline letter dated October 11, 2004, assessing him discipline of Three (3) work days

deferred suspension for violation of Metra Employee Conduct Rule N, Paragraph No. 3, Item Nos. 1 and 2.

The Notice of Discipline letter of October 11, 2004, is attached to this Award.

The transcript of the investigation held on October 1, 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:

On September 7, 2004, Mr. Romero was assigned the duty of clearing up tree debris which was scattered around the head cart building and placing the debris in a dumpster for disposal.

Mr. Romero was operating a John Deere swing loader with a bucket attached. The brush was placed in the bucket, and in the process of traveling to the dumpster site, the incident occurred which gave rise to this dispute.

Mr. Romero had to travel down a public street to the site where the Company dumpster was located.

In traveling to the site of the dumpster, Mr. Romero in his Speed Swing was following two cars. The two cars stopped at the intersection to make a turn

onto Rockland Road. The lead car made a turn and proceeded to the right at the intersection. The car in front of Mr. Romero did not move which resulted in Mr. Romero being required to abruptly stop his machine to avoid hitting the vehicle; however, the brush from the bucket of Mr. Romero's machine struck the car ahead and caused damage to the vehicle.

Mr. Romero immediately notified Mr. Ken Rabe, Jr. his supervisor and reported the accident. Mr. Rabe testified that he proceeded to the location and made an investigation of what happened.

Mr. Rabe confirmed that Mr. Romero's machine did not strike the vehicle ahead, but the damage was caused by brush protruding from Mr. Romero's machine bucket.

In our review of the investigation transcript, we find that there is no dispute as to the facts involved in the accident.

The Organization took the position that the accident could have been avoided if the dumpster had been placed in a closer and safer location which did not require traveling on a public street.

That position is a hindsight position as it does nothing to alter the facts that occurred in this dispute. Mr. Romero was operating a Speed Swing machine, and in this incident while his vehicle did not strike the vehicle ahead of him, the brush from the bucket of Mr. Romero's machine did strike the trunk of the vehicle and caused damage.

Mr. Romero was responsible for the safe operation of his vehicle which included the brush debris in the bucket.

Accordingly, we can find no basis for overruling the discipline assessed Mr. Romero in this dispute of Three (3) work days deferred suspension.

AWARD:

Claim denied.

Charles J. Chamberlain

Charles J. Chamberlain
Neutral Member

Date January 10, 2005

NORTHEAST ILLINOIS RAILROAD CORPORATION

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

NOTICE OF INVESTIGATION

September 14, 2004

SENT VIA FAX

Mr. S. M. Romero, Machine Operator, #6599

Mr. Romero:

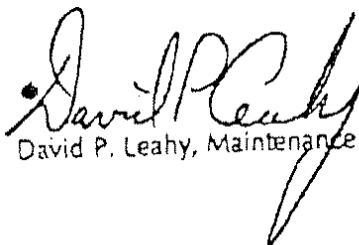
You are hereby instructed to attend a formal investigation which will be held in the office of the Director of Engineering, Milwaukee District, 2931 W. Chicago Ave, Chicago, Illinois 60622 on Wednesday, September 22, 2004 at 9:00 A.M.

The purpose for this investigation is to develop the facts, determine the cause and assess responsibility, if any, in connection with your alleged carelessness while operating the speed swing on September 7, 2004 which resulted in the striking of an automobile in the rear and causing damage to that vehicle.

In connection therewith you are charged with alleged violation of the following rules: Metra Employee Conduct Rule N, Paragraph No. 3, Item Nos. 1 and 2.

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.



David P. Leahy, Maintenance Engineering Supervisor

C/C-BMW-WIMMER

L/C-BMW-KMIEC

V. L. Stoner

R. C. Schuster

W. K. Tupper

G. Washington

B. H. Smith

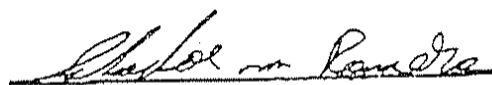
J. Barton

C. Cary

K. W. Rabe, Jr.-----Please arrange to appear as a company witness

K. Petschow, Metra Police----Please arrange to appear as a company witness

I hereby acknowledge receipt of this letter.


Signature

9-14-2004
Date

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

NOTICE OF DISCIPLINE

S. Romero #6599
Employee Name

Rondout
Work Location

David P. Leahy
Supervisor assessing discipline

DATE: October 11, 2004

X FORMAL INVESTIGATION SCHEDULED FOR SEPTEMBER 22
2004, POSTPONED TO SEPTEMBER 29, 2004 AND
POSTPONED AND HELD OCTOBER 1, 2004

WAIVER OF INVESTIGATION

Charge: Carelessness while operating the speedswing on September 7, 2004 resulting in striking an automobile and causing damage to that vehicle

Rule(s) Violation: Metra Employee Conduct Rule N, Paragraph No 3, Items Nos. 1 and 2

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:	

3:00pm
 Time

10 OCT 04
 Date

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

8:32 A
 Time

10-11-04
 Date

S. Romero
 Charged Employee-S. Romero

 Time

 Date

 Union Representative

8:32 A
 Time

10-11-04
 Date

[Signature]
 Witness

cc: V. Stoner
 R. C. Schuster
 W. K. Tupper
 G. Washington
 C. Cary
 P. Connor
 J. Barton
 CC-BMWE - Wimmer
 LC-BMWE- Kmiec