

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1122

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

NMB Case No. 43

Mr. Arthur R. Perez, Bridge & Building Foreman Metra Electric District, and Mr. Robert J. Shanahan, B&B Mechanic/Driver, received a letter dated October 29, 2004, directing them to attend a formal investigation to be held in the KYD Conference Room, 12301 S. Indiana Avenue, Chicago, Illinois, at 9:00 a.m. on Thursday, November 4, 2004.

The purpose of the investigation was develop facts, determine the cause and assess responsibility, if any, in connection with their alleged failure to properly protect Metra Vehicle 91055 when backing up and striking parked Vehicle 91091 and causing damage to said vehicle at 154th Street and Park Avenue in Harvey, Illinois, at approximately 9:10 a.m. on Tuesday, October 19, 2004.

Both employees were charged with possible violation of Metra Employee Safety Rule 107.10; and Engineering Department Special Instructions No. 14 Item 5.

The letter of October 29, 2004, is attached to this Award.

The investigation was postponed until Thursday, November 18, 2004, and held on that date.

During the investigation held on November 18, 2004, Mr. Jack David, Vice Chairman of the BMW, requested a short recess. On reconvening the investigation, Mr. Archer, the Hearing Officer, announced that Mr. Perez had opted to waive the investigation and had initiated proper documents and everything had been signed and completed.

At that point, Mr. Perez was no longer a part of the investigation except for possible recall as a witness.

The Hearing continued with Mr. Shanahan being the only charged employee.

Following the investigation, Mr. Shanahan received a Notice of Discipline letter dated December 7, 2004, assessing him discipline of Five Work Days Actual Suspension for violation of Metra Employee Safety Rule 107.10; and Engineering Department Special Instructions No. 14 Item 5.

The Notice of Discipline letter of December 7, 2004, is attached to this Award.

The transcript of the investigation held on November 18, 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:

This dispute involves an incident which occurred at 154th Street and Park Avenue in Harvey, Illinois, on Tuesday, October 19, 2004, at approximately 9:10 a.m.

Mr. Robert Shanahan, B&B Mechanic, on the Electric Line was the driver of Metra Vehicle 91055 when the incident occurred.

Mr. Shanahan testified that on the day of the accident he proceeded to load tools in the back of his truck. A fellow employee was outside the truck.

Mr. Shanahan testified that before he got in the truck, he saw nothing behind his truck, and he proceeded to get in his truck. The fellow employee then got in the truck, and Mr. Shanahan started to back up his truck when he bumped into the other truck Vehicle 91091.

Mr. Art Perez, Mr. Shanahan's immediate Foreman, notified Mr. Jerry Bailey, Bridge & Building Supervisor, of the incident who proceeded to the scene to investigate the incident. Metra police were also notified, and Lt. S. Castro arrived at the scene at the same time as Mr. Bailey. Lt. Castro's report, Carrier Exhibit No. 5, revealed the details of the accident which confirmed the testimony of Mr. Shanahan as to what happened. There were no injuries, and damage to Vehicle 91091 amounted to a dent in the bumper – driver's side and estimated to be less than \$300.

The record reveals that there is no dispute as to the facts involved in the incident.

Based on our review of the record, it is clear that Mr. Shanahan was obviously responsible for the accident, which would warrant the imposition of some discipline. However, as this Board has previously stated in Award No. 26 and most recently Award No. 40, we firmly believe that the discipline assessed must be commensurate with the employee's transgression. It is clear that this incident did not indicate any kind of flagrant misconduct or carelessness on the part of Mr. Shanahan that would warrant a five-day suspension. Mr. Shanahan has been employed by Metra since October 1, 2001, and has a clean record during that time. In this Case, as in Award No. 40, it is apparent that the Carrier applied the discipline imposed without regard for the circumstances that occurred.

In the opinion of the Board, based on the circumstances in this dispute, the appropriate measure of discipline for Mr. Shanahan would be a Letter of Reprimand.

The Board directs that the record of Mr. Shanahan be revised accordingly, and he be compensated for any time lost as a result of the suspension

AWARD:

Claim partially sustained in accordance with the above Findings.



Charles J. Chamberlain
Neutral Member

Date January 19, 2005



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

October 29, 2004

Fed Ex Tracking No.: 844344914146

U. S. Mail Delivery

Arthur R. Perez Emp. #8567
2643 S. 61st Avenue
Cicero, IL 60804

Robert J. Shanahan Jr. Emp. #8148
B&B Mechanic/Driver

Dear Sirs:

Arrange to attend a formal investigation to be held in the KYD Conference Room, 12301 S. Indiana Avenue, Chicago, Illinois 60628, at 9:00 a.m., on Thursday, November 4, 2004.

The purpose of this investigation is to develop the facts, determine the cause, and assess responsibility, if any, in connection with your alleged failure to properly protect Metra Vehicle 91055, when backing up and striking parked Vehicle 91091 and causing damage to said vehicle at 154th Street and Park Avenue in Harvey, Illinois, at approximately 9:10 a.m., on Tuesday, October 19, 2004.

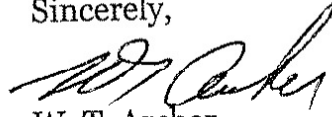
In connection therewith, you are charged with possible violation of Metra Employee Safety Rule 107.10; and Engineering Department Special Instructions No. 14 Item 5.

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.

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

Sincerely,



W. T. Archer
Director M/E Engineering

Attachments

cc: V. L. Stoner	J. Barton	B. Smith
W. K. Tupper	G. Washington	H. J. Granier, G/C
D. S. Mogan	C. Cary	T. P. Petty, Asst. V-G Chairman
J. David, VP BMW		
T. R. McCoy, Jr. G/C		
V. Gonzales, L/C		

J. A. Bailey - Please arrange to attend as a Company Witness

NOTICE OF DISCIPLINE

7004 0550 0000 6010 5030

Certified Mail No.

December 7, 2004

Date

(Copy also sent U.S. Mail)

Robert J. Shanahan Jr., Emp. #8184
11525 193rd Street, Mokena IL 60448

Employee Name and Address

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

Charge: Failure to properly protect Metra Vehicle 91055, when backing up and
striking parked Vehicle 91091 and causing damage to said vehicle.
on Tuesday, October 19, 2004, at approximately 9:10 a.m.

Rule Violation: Metra Employee Safety Rule 107.10; and Engineering Department
Special Instructions No. 14 Item 5.

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

- ☐ 1. **Letter of Reprimand** (letter attached, effective for two (2) years).
- ☐ • If you waive investigation, the reprimand letter will be effective for one (1) year.
- ☐ 2. **Three Work Days Deferred Suspension** (this suspension will remain deferred for two (2) years and will be served as actual suspension if further discipline is assessed during that period).
- ☐ • If you waive investigation, one (1) day of deferred suspension is assessed instead of three (3) days.
- ☒ 3. **Five Work Days Actual Suspension** TO BE SERVED UPON YOUR RETURN FROM FURLOUGH.
- ☐ • If you waive investigation, three (3) work days of suspension will be served instead of five (5) work days, plus the deferred days from Step 2.
- ☐ Your record indicates deferred suspension of _____ work day(s) which was assessed on _____ and must be served in conjunction with discipline noted above.

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☐ 4. **Ten Work Days Actual Suspension.**

- ☐ • If you waive investigation, seven (7) work days of suspension will be served instead of ten (10) work days.

☐ 5. **Dismissal:** Your employment with this corporation is terminated effective _____ (Date). You must immediately return all company property.

☐ **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.

☐ **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:

W. K. Tupper Chief Eng. 12/17/04
Signature & Title of Supervisor Assessing Discipline

2:15 12/17/04
Time Date

Employee

Union Witness

cc: V. L. Stoner
W. K. Tupper
R. C. Schuster
J. L. Barton
G. M. Washington
C. P. Cary
B. Smith
General Chairman - U.S. Mail
Local Chairman - U.S. Mail