

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1122

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

NMB Case No. 44

This dispute involves Mr. Luis Carreno employed by Metra as a Trackman Driver and Mr. Jose Lagunas employed by Metra as a Trackman.

On October 18, 2004, Mr. Carreno, Mr. Lagunas and Trackman David Mendez were working on a Track Gang at Grayslake, Fox Lake Sub., under the supervision of Mr. Jose Aguilar, Track Foreman.

Mr. Carreno, Mr. Lagunas and Mr. Mendez were working at the CNN diamond replacing a defective angle bar. In the process of replacing the angle bar, Mr. Carreno sustained an injury to his finger which required medical treatment.

On October 22, 2004, Mr. Carreno and Mr. Lagunas received a letter instructing them to attend a formal investigation on Wednesday, October 27, 2004, for the purpose of developing the facts, determine the cause, and assess responsibility, if any, in connection with their alleged failure to perform their work in an alert and attentive manner and their alleged carelessness, resulting in injury on October 18, 2004, at Grayslake, Fox Lake Sub. MP 39.9.

Both employees, Mr. Carreno and Mr. Lagunas, were charged with alleged violation of Safety and General Procedures Rule No. 1.1.2 and Employee Conduct Rule N, paragraph 3, item 1.

The investigation was postponed by mutual agreement between the parties and subsequently held on November 17, 2004.

Following the investigation, Mr. Lagunas received a Notice of Discipline letter dated December 7, 2004, assessing him discipline of Three (3) work days deferred suspension for violation of Safety and General Procedures Rule No. 1.1.2 and Employee Conduct Rule N, paragraph 3, item 1.

The transcript of the investigation held on November 17, 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 October 18, 2004, Track Foreman Jose Aguilar and his crew were assigned to replace a defective angle bar at the CNN diamond at Grayslake, Fox Lake Sub. MP 39.9.

Foreman Aguilar requested foul time from the Dispatcher to work on the diamond. The Dispatcher gave him 30 minutes to perform the work, and Mr. Aguilar directed his crew to start the replacement of the angle bar.

Trackman David Mendez, Trackman Jose Lagunas and Trackman-Driver Luis Carreno were involved in the process of replacing the angle bar. Foreman Aguilar was acting as lookout for his crew while they performed the work on the diamond.

Mr. Lagunas testified that they removed the screws, replaced the angle bar and put in three screws on one side with the bolt and washer. In installing the three screws on the other side of the angle bar, he noted that the screws did not line up correctly so he started to hit them with a sledge hammer. While swinging the sledge hammer, Mr. Carreno walked up in front of him and leaned over to grab the bolt which resulted in Mr. Carreno's finger being hit with the hammer as Mr. Lagunas could not stop his swing.

In our review of the transcript testimony of the individuals involved in this incident, occurring on October 18, 2004, the work being performed was routine maintenance work that they frequently perform. The employees involved have replaced many broken or defective angle bars.

Mr. Aguilar was in charge and asked for foul time so his crew could replace the defective angle bar. Mr. Aguilar acted as lookout for his crew, and they proceeded to do their job.

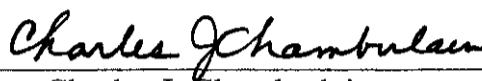
The employees were working to get the angle bar replaced in the 30-minute foul time that had been given them by the Dispatcher.

Mr. Lagunas was using a sledge hammer which is frequently used when bolts do not align properly. Mr. Lagunas cannot be faulted for the action of Mr. Carreno grabbing the bolt while Mr. Lagunas was swinging the hammer. Unfortunately, Mr. Carreno suffered a minor injury to his finger in the process; however, there is nothing in the record that indicates that Mr. Lagunas was careless in what he was doing in the use of the hammer.

Accordingly, it is the decision of the Board that there is no basis or justification for the discipline assessed Mr. Lagunas of Three (3) work days deferred suspension, and the Carrier is directed to rescind its Notice of Discipline letter dated December 7, 2004, to Mr. Lagunas and his record be cleared of the charge.

AWARD:

Claim sustained in accordance with the above Findings.



Charles J. Chamberlain
Neutral Member

Date February 9, 2005