

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1122

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

NMB Case No. 45

This dispute involves Mr. Jose Aguilar employed by Metra as Track Foreman of a section gang at Rondout.

Mr. Aguilar has been employed in the railroad industry for about 30 years with service with Metra since 1992.

On October 18, 2004, Mr. Aguilar and his crew were assigned to work at the CNN diamond at Grayslake to replace a broken angle bar.

In the process of replacing the angle bar, one of the employees in the crew sustained an injury to his finger which required medical treatment.

On October 20, 2004, Mr. Aguilar received a letter instructing him 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 his alleged negligence and failure to observe employees under his jurisdiction for safe work practices which led to the injury of Mr. Luis G. Carreno on October 18, 2004, at Grayslake, Fox Lake Sub. MP 39.9.

Mr. Aguilar was charged with violation of Safety and General Procedures Rule No. 100.6, Item 4 and Employee Conduct Rule N, paragraph 3, item 2.

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

Following the investigation, Mr. Aguilar 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. 100.6, Item 4 and Employee Conduct Rule N, paragraph 3, item 2.

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:

The incident occurring on October 18, 2004 that gave rise to this dispute involves the same parties and the same factual situation which was before this Board in NMB Case No. 44. In NMB Case No. 44, two of the employees of Mr. Aguilar's section crew were charged with failure to perform their work in an alert and attentive manner and alleged carelessness which resulted in an injury to one of the employees while replacing a defective angle bar. Discipline of Three (3) work days deferred suspension was assessed one of the employees for violation of certain Carrier Rules. In NMB Case No. 44, the Board held that the record did not

support the Carrier's charge and directed the Carrier to rescind its Letter of Discipline and clear the employee's record of the charge.

In this dispute, Mr. Aguilar, the foreman of the crew involved in the incident occurring on October 18, 2004, was charged with negligence and failure to observe employees under his jurisdiction for safe work practices which led to the injury of one of the employees.

The Board has reviewed this dispute and the charge against Mr. Aguilar and fails to find any evidence or basis for the charges levied against him. Mr. Aguilar received instructions to replace a broken angle bar at the CNN diamond in Grayslake on October 18, 2004. Mr. Aguilar requested foul time from the Dispatcher for his crew to perform the work. The crew was allotted 30 minutes foul time and proceeded to replace the angle bar. Mr. Aguilar acted as lookout for his crew while they proceeded with their assignment. The work being performed was of a nature that the crew has performed on many occasions. It does not require a foreman to stand over them and instruct them how to perform the work. Mr. Aguilar acted appropriately and responsibly in getting foul time and acting as lookout for his crew.

Mr. Aguilar was not guilty of the charge of negligence or failure to observe employees under his jurisdiction for safe work practices. Whether he was five or fifteen feet from the employees while they were doing the work is irrelevant; in fact, for safety reasons, it is appropriate to not be in close proximity to his crew while they were working on replacing the broken angle bar.

Based on the record before us, it is the decision of this Board that there is no basis or justification for any discipline being assessed Mr. Aguilar, and the Carrier is directed to rescind its Letter of Discipline dated December 7, 2004, to Mr. Aguilar and his record cleared of the charge.

AWARD:

Claim sustained in accordance with the above Findings.

Charles J. Chamberlain

Charles J. Chamberlain
Neutral Member

Date February 15, 2005