

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1122

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

NMB Case No. 48

This dispute involves an incident which occurred at the 59th Street Station in Chicago, Illinois, on Tuesday, May 17, 2005.

A B&B crew under the supervision of Mr. Earnest Sanders was engaged in the process of building a ramp to go over a deteriorated concrete walkway at the 59th Street Station, northbound platform.

Two of the members of the crew, Mr. Curtis Streeter and Mr. Mario Reeves, B&B mechanics, became involved in a verbal confrontation which escalated into a physical confrontation which resulted in the injury to Mr. Curtis Streeter.

Mr. Earnest Sanders and other members of his crew broke up the confrontation, and Mr. Sanders, because of the serious nature of the injury sustained by Mr. Curtis Streeter, called Mr. Jerry Bailey, B&B Supervisor, and the Metra Police who immediately went to the scene to investigate the incident.

Following the incident, both Mr. Streeter and Mr. Reeves were sent a letter dated May 19, 2005, directing them to attend a formal investigation on

Wednesday, May 25, 2005, to be held in the KYD Conference Room, 12301 S. Indiana Avenue, Chicago, Illinois, at 9:00 a.m.

The purpose of the investigation was to develop the facts, determine the cause, and assess responsibility, if any, in connection with an alleged altercation between two B&B Mechanics, Mario Reeves and Curtis Streeter, on Tuesday, May 17, 2005.

In connection therewith, both Mr. Reeves and Mr. Streeter were charged with possible violation of Metra Employee Conduct Rule No. N.

The investigation was postponed by agreement between the parties until August 16, 2005, and was held on that date.

Following the investigation, Mr. Mario Reeves was sent by Certified Mail a Notice of Discipline letter dated August 30, 2005, dismissing him from service effective August 30, 2005, for violation of Metra Employee Conduct Rule No. N, in the altercation which occurred on Tuesday, May 17, 2005, between him and Mr. Streeter.

The transcript of the investigation held on August 16, 2005, 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:

At the investigation held on August 16, 2005, the following parties were present and participated in the proceedings:

EMPLOYEE REPRESENTATIVE

H. J. Granier, General Chairman, BMW

T. P. Petty, Local Chairman, BMW

PERSONS INTERROGATED

J. A. Bailey, B&B Supervisor

B. Blackmore, Detective – Metra Police

E. Sanders, B&B Foreman

S. Kmiec, B&B Mechanic

R. Nunez, B&B Mechanic

C. Streeter, B&B Mechanic

M. Reeves, B&B Mechanic

Mr. W. T. Archer, Director of Engineering, conducted the Hearing.

The first person to testify at the Hearing was Mr. J. A. Bailey, B&B Supervisor. Mr. Bailey testified that he received a call from Mr. Earnest Sanders to come to 59th Street because there was a fight going on between Mario Reeves and Curtis Streeter. Mr. Sanders stated that Mario Reeves had stabbed Curtis Streeter with a knife. Mr. Bailey immediately proceeded to the scene. On arriving at the scene, Mr. Bailey asked Mr. Sanders what had happened. Mr. Sanders stated that Curtis and Mario had an argument, and it turned into a fist fight and then it turned into Mario stabbing Curtis. Mr. Bailey then asked Mr. Streeter what had happened, and he stated to Mr. Bailey, "No, that's not what happened at all."

Mr. Bailey went to the other two employees in the crew, Mr. Steve Kmiec and Mr. Ruben Nunez, and they both stated "the same as Ernie told you."

We have reviewed the transcript testimony of all involved at the scene of the incident. The testimony of Mr. Sanders, Mr. Nunez, and Mr. Kmiec clearly reveal that the verbal altercation between Mr. Reeves and Mr. Streeter turned into a physical confrontation where blows were exchanged and then escalated into a situation where Mr. Reeves pulled out a knife from his pocket and stabbed Mr. Streeter. The entire incident was witnessed by three fellow employees. There is absolutely no basis for this Board to ignore those facts and give any credence to the testimony of Mr. Reeves who stated he could not remember because he "blacked out."

What transpired in this Case is a tragic example of how verbal altercations can turn into physical altercations and one of the parties involved "loses" it and resorts to an action that could have led to disastrous results.

There is no doubt or question about what happened in the incident in this dispute.

Having determined that the Claimant was properly held responsible for his part in the physical altercation that occurred on May 17, 2005, the only remaining question is whether permanent dismissal is the appropriate measure of discipline. Certainly, in the absence of significant mitigating circumstances, the Carrier is fully justified in terminating an employee who engages in this kind of behavior.

In this case, however, the Board cannot ignore the evidence of record indicating that Mr. Streeter, to some extent, instigated the altercation. That should not be taken as any indication that the Claimant was justified in the extreme

violence of his response. The Claimant himself was responsible for the situation turning into a physical confrontation. In the absence of any other mitigating factors, the initial provocation alone would not provide a sufficient basis for amending the Carrier's decision.

The record does contain another mitigating factor, however, that must be given due consideration: the Claimant's personal record. The Board notes that the record compiled by the Claimant during his 15 years of service does not contain a single previous entry of formal disciplinary action. That would seem to indicate that except for the incident on May 17, 2005, the Claimant was a responsible employee.

Accordingly, the Board finds that the Claimant will be afforded the opportunity to prove that he can once again be a responsible, productive employee. The Board directs that Mr. Reeves be returned to service, subject to the following conditions:

1. The Claimant's dismissal will be reduced to a suspension of one (1) calendar year, dated from May 18, 2005.
2. Prior to being reinstated, the Claimant must contact the Carrier's Employee Assistance Program and follow any course of treatment as recommended by the EAP. The Claimant must receive a favorable recommendation from the EAP prior to returning to work and must continue to comply with any recommended course of treatment. If the Claimant fails to comply with this provision, the Carrier will be under no obligation to reinstate the Claimant or retain him in service and he will return to the status of a dismissed employee.
3. The Claimant's reinstatement will be with his seniority rights unimpaired, but he will receive no compensation for time lost.

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AWARD:

Claim partially sustained in accordance with the above Findings.

Charles J. Chamberlain

Charles J. Chamberlain
Neutral Member

Date January 23, 2006