

SPECIAL BOARD OF ADJUSTMENT NO. 1122

BROTHERHOOD OF MAINTENANCE) OF WAY EMPLOYES) and) NORTHEAST ILLINOIS REGIONAL) COMMUTER RAILROAD CORP.,) (METRA))	AWARD NO. 53 CASE NO. 53 Carrier File No. 8-7-543
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STATEMENT OF CLAIM:

Appeal of Claimant Curtis Streeter's suspension for violation of Metra Employee Conduct Rule 'N.'

FINDINGS:

Special Board of Adjustment No. 1122, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employes within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted, and that the Board has jurisdiction over the dispute herein.

Claimant is employed by the Carrier as a B & B Mechanic at the 19th Street facility in Chicago, Illinois. He began his employment with the Carrier on June 8, 1992.

On March 20, 2007, Claimant and co-worker T. Evans were removed from service after an incident occurred at the facility. By notice dated March 21, 2007, Carrier charged both employees with engaging in a verbal altercation in violation of Metra Employee Conduct Rule N. They were instructed to attend a formal investigation in connection with the charges on March 30, 2007.

The investigation was held as scheduled, and Claimant subsequently was suspended from his job assignment for the period March 20, 2007 through April 18, 2007. In accordance with the Agreement, the discipline has been appealed to this Board for expedited handling.

After careful review of the record in its entirety, the Board finds that the Carrier was in the process of addressing a previous incident that took place on March 15, 2007 between these same two employees. A meeting had been scheduled on the morning of March 20, 2007 to attempt to resolve the matter. As the employees were preparing to leave for the meeting, Claimant admittedly said to those present, "All this because of this punk." Mr. Evans then responded by saying, "You see a punk, slap a punk." Foreman R. Bowsky, who was present in the room,

testified that Mr. Evans "came up in [Claimant's] face" and said "we can do this right here." According to Foreman Bowsky, Claimant replied: "Why you want to do this on Company time, be a man about it, just go after 3:30, outside the gate." Foreman Bowsky and another employee heard Claimant call Mr. Evans an "ass." B & B Foreman E. Sanders, who was also present, testified that Claimant and Mr. Streeter then began arguing, using loud angry voices. Foreman Sanders stopped the argument. Mr. Evans summoned the police, and Claimant was arrested.

Claimant and Mr. Evans both blame each other for starting the incident. Each insists that he did not accelerate the verbal exchange into an altercation. However, the credible evidence from the witnesses who were present suggests otherwise. This was not a one-sided assault. Claimant not only ignored the opportunity to cease the confrontation but he carried it further with his words and actions. Notwithstanding the Organization's contention to the contrary, his participation in this exchange went far beyond what might be considered "shop talk" or harmless banter.

We find that there is substantial evidence to support the finding that Claimant violated Rule N, which provides as follows:

Rule N: Courteous deportment is required of all employees in their dealing with the public, their subordinates and each other.

Employees must conduct themselves in such a manner and handle their personal obligations in such a way that their railroad will not be subject to criticism or loss of good will.

Employees must not be:

- 1) Careless of the safety of themselves and others.**
- 2) Negligent.**
- 3) Insubordinate.**
- 4) Dishonest.**
- 5) Immoral.**
- 6) Quarrelsome or otherwise vicious.**

Once the Board has determined that there has been a violation of Carrier rules, we next turn our attention to the type of discipline imposed. This Board will not set aside Carrier's imposition of discipline unless we find its actions to have been arbitrary or capricious.

No such finding is warranted in this instance. The discipline imposed was proportionate to the proven offense. Carrier has an obligation to provide a safe

work place. It has the right to impose discipline when an employee engages in a serious verbal altercation, particularly one in which there are threats exchanged on Carrier property. Although the Organization argues that Carrier should have averted this incident by taking action through the EAP, it must be remembered that Carrier was in the process of trying to resolve the earlier problem between these two employees when this altercation broke out. Equally important, it is ultimately the employee's responsibility to maintain control of his behavior on the job. Here, Claimant showed a willingness to engage in a very inappropriate confrontation. There is no basis for disturbing the Carrier's ultimate decision and penalty. Claim denied.

AWARD

Claim denied.


ANN S. KENIS
Neutral Member

Dated this 30th day of May, 2007.