

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1122

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

NMB Case No. 6

This case involves Mr. Robert Tyrone who is employed by Metra as B & B Mechanic.

On November 3, 2000, Mr. Tyrone was hand-delivered a letter from Mr. John A. Pebler, Director of Engineering, Metra Milwaukee District, instructing *him to attend an investigation on November 8, 2000, for the purpose of developing the facts, determine the cause and assess responsibility, if any, in connection with alleged misconduct regarding the CP Engineering Maintenance of Way Rules Class and examination which Mr. Tyrone took on November 1, 2000.*

Mr. Tyrone was charged with possible violation of Employee Conduct Rule N, Para. 2, Item 4, and Metra's Maintenance of Way Rule 1.6.

The letter of November 3, 2000, is attached to this Award.

The investigation was postponed until November 16, 2000, but by mutual agreement between the parties the investigation was held on November 13, 2000.

Following the investigation, Mr. Tyrone received a Certified letter dated November 28, 2000, from Mr. Laurence C. Powell, Maintenance Engineering Supervisor, Milwaukee District Engineering, advising Mr. Tyrone that he had

been dismissed from service effective November 28, 2000, for violation of Employee Conduct Rule N, paragraph 2, Item 4 and GCOR Rule 1.6.

The letter of November 28, 2000, is attached to this Award.

The transcript of the investigation held on November 13, 2000, 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 a Rules Examination Class held on November 1, 2000, for employees on General Code of Operating Rules and Canadian Pacific Rules that govern the Milwaukee District Employees.

The class was conducted by Mr. Daniel Denton, Rules Examiner.

Mr. Denton testified that he had conducted similar classes for employees on October 17, 18, and 19, 2000.

Mr. Denton in testimony given in NMB Case No. 5 involving the same class and same group of employees stated that he had been alerted by unnamed sources that there were probable irregularities taking place among employees taking the tests.

As a result of that information, Mr. Denton testified that he revised the tests by re-arranging the order in which the questions appeared on the examination.

The examination given on November 1, 2000, which Mr. Tyrone participated in, had the same questions but in the re-arranged order.

Mr. Denton testified that Mr. Tyrone answered correctly 19 out of 50 questions, 12 of the correct answers were in the same order as in previous tests conducted.

Mr. Denton testified that a review of the results of Mr. Tyrone's exam raised the possibility that serious irregularities were involved.

In this dispute as in Case No. 5, the incident giving rise to the dispute was the Rules Examination given on November 1, 2000, to 43 employees.

The facts in each case are identical, the only difference being the individuals involved who are the subject of their respect investigations.

The thrust of the defense presented by the Organization is two fold, first irregularities have happened before in Rules Exam classes and nothing was done about it.

Second, the examiner did not visibly witness any cheating and accordingly no one is guilty. We have serious problems with those conclusions. The fact that irregularities occurring in Rules Exams over the past several months somehow makes it OK and precludes the Carrier from making an effort to correct the situation as in the instant case before us cannot be accepted.

The fact that cheating was not visibly noticed does not guarantee that it did not happen.

In this case as in NMB Case No. 5, the striking similarities as to the results of the tests of both individuals involved lead to the logical conclusion that the irregularities did occur and not by chance.

The other disturbing fact brought out by the transcript testimony is the action on the part of the Organization Representative to answer all questions posed to the employee charged.

Mr. Tyrone was perfectly capable of answering questions posed by the Hearing Officer.

Mr. Tyrone has an employment record dating back to 1988. The record is clean and contains no disciplinary action in all of those years.

That leads us to the conclusion that the sequence of events in this dispute and the evidence in the record involving Mr. Tyrone cannot be ignored, however, it does not warrant the discipline of permanent dismissal assessed against Mr. Tryone.

It is indisputable that irregularities have been taking place in the Rules Exam process for Employees. The Carrier to its credit made an attempt to correct the problem by revising tests and procedures.

Mr. Tyrone failed the test in a manner that was certainly questionable of an individual who has held a responsible position with the Carrier for almost 12 years.

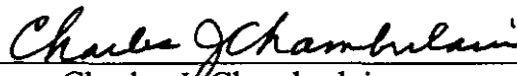
Accordingly, it is the decision of this Board that Mr. Tyrone be returned to service with all seniority and all other rights unimpaired but with no pay for time lost.

It is also the recommendation of this Board that the Carrier and Organization Representatives jointly convene and work out procedures for taking rules exams that are fair and equitable so as to avoid any possibility that irregularities can occur in future exams.

This Award to be complied with within thirty (30) days of the date of this Award.

AWARD:

Partially sustained in accordance with the above Findings.



Charles J. Chamberlain
Neutral Member

Date February 2, 2001

SBK 1122

Case 6



Metra Milwaukee District
2931 West Chicago Avenue
Chicago, IL 60622

November 3, 2000

HAND DELIVERED

Mr. Robert J. Tyrone
8642 S. Vernon
Chicago, IL 60619

Emp. #5641

ACKNOWLEDGEMENT:

Robert J. Tyrone
Signature

11-9-00
Date

John Pebler
Witness

Dear Sir:

You are hereby instructed to attend a formal investigation which will be held in the Office of the Director of Engineering, Milwaukee District, 2931 W. Chicago Avenue, Chicago, IL 60622 at 11:00 a.m., Wednesday, November 8, 2000.

The purpose of this investigation is to develop the facts, determine the cause, and assess responsibility, if any, in connection with your alleged misconduct regarding the CP Engineering Maintenance of Way Rules Class and examination which you took on November 1, 2000.

In connection therewith, you are charged with possible violation of Metra Employee Conduct Rule N, Para. 2, Item 4, and Metra's Maintenance of Way Rule 1.6.

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.

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

Sincerely,

John Pebler

J. A. Pebler
Director of Engineering
Metra Milwaukee District

Attachment

cc: V. L. Stoner G. Washington
W. K. Tupper J. Barton
R. C. Schuster H. Thomas
C. Cary D. Nys
D. S. Mogan
H. J. Granier, G/C
M. A. Hozian

D. Denton - Please arrange to appear as a witness

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NORTHEAST ILLINOIS RAILROAD CORPORATION

**Milwaukee District Engineering
2931 West Chicago Avenue
Chicago, Illinois, 60622**

Results of Investigation**US Mail & Certified Mail**

Mr. R. Tryone, B&B Mechanic
Western Ave.

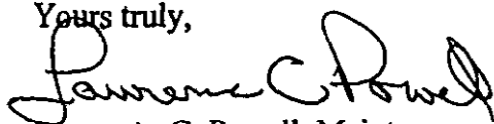
November 28, 2000

A review of the transcripts of the investigation, scheduled for November 8, 2000, postponed until November 16, 2000 and held on November 13, 2000 by the request of the Local Chairman Mr. Petty, has resulted in the following discipline being issued. This will be placed on your record as outlined in the progressive discipline policy.

RULE VIOLATIONS: Employee Conduct Rule N, paragraph 2, Item 4 and GCOR Rule 1.6

DISCIPLINE: See attached Notice of Discipline for **DISMISSAL**

Yours truly,



Lawrence C. Powell, Maintenance Engineering Supervisor
Milwaukee District Engineering
(312) 322-4118

LCP/lcp

cc: G/C-BMWE
L/C-BMWE
V. L. Stoner
W. K. Tupper
R. C. Schuster
G. Washington
H. Thomas
J. Barton
C. Cary

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NORTHEAST ILLINOIS REGIONAL COMMUTER RAILROAD CORPORATION

NOTICE OF DISCIPLINE

<u>R. Tryone</u>	<u>Western Ave</u>	<u>Lawrence C. Powell</u>
Employee Name	Work Location	Supervisor assessing discipline

DATE: November 28, 2000

X FORMAL INVESTIGATION
SCHEDULED FOR NOVEMBER 8, 2000
POSTPONED UNTIL NOVEMBER 16, 2000
HELD BY REQUEST ON NOVEMBER 13, 2000

WAIVER OF INVESTIGATION

Has indicated your responsibility in connection with the violation of Metra Conduct Rule N, paragraph 2, Item 4 and GCOR Rule 1.6, when you were dishonest on November 1, 2000 at Western Ave. Therefore, you are hereby assessed the following discipline which will also be entered on your personal record:

<i>Formal</i>	<i>Waiver</i>
1. Formal Letter of Reprimand (effective for two years)	1. Formal Letter of Reprimand (effective for one year)
2. Three (3) work days deferred suspension	2. One (1) work day deferred suspension
3. Five (5) work days suspension plus the deferred days from step two (2)	3. Three (3) work days suspension plus the deferred days from step two (2)
Your record indicates a deferred suspension of ___ day(s) was assessed on _____ and must be served in conjunction with discipline outlined above. As a result, suspension will begin _____ and end _____. You must return to work on _____. Failure to return on that date will be treated as an unauthorized absence.	
4. Ten (10) work days suspension	4. Seven (7) work days suspension
As a result, suspension will begin _____ and end _____. You must return to work on _____. Failure to return on that date will be treated as an unauthorized absence.	
X 5. Dismissal	5. Dismissal
Your employment with this Corporation is terminated effective <u>November 28, 2000</u> . You must return all company property.	

Employee
cc: Metra Personnel

Union Witness

Lawrence C. Powell
Supervisor assessing discipline