

SPECIAL BOARD OF ADJUSTMENT NO. 1122

BROTHERHOOD OF MAINTENANCE)	
OF WAY EMPLOYEES)	
)	
and)	AWARD NO. 62
)	CASE NO. 62
NORTHEAST ILLINOIS REGIONAL)	
COMMUTER RAILROAD - METRA)	

STATEMENT OF CLAIM:

Claim on behalf of F. Kmiec, Trackman, for expungement of discipline assessed, payment for all time lost, and reimbursement for benefits lost during time withheld from service.

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 the Board has jurisdiction over the dispute herein.

Claimant entered the service of the Carrier as a Trackman on June 23, 1997. By notice dated January 5, 2010, he was instructed to attend a formal investigation in connection with: "...your alleged failure to protect your position as Trackman, Flagging at Franklin Park on December 26 and December 27, 2009." In connection therewith, Claimant was charged with the following rule violations:

Employee Conduct Rule Q:

Employees must report at the appointed time, devote themselves exclusively to their duties, must not absent themselves, nor exchange duties with, or substitute others in their place, without proper authority.

Engineering Department Special Instruction No. 1

All employees must be punctual, maintain a satisfactory attendance record and cover their assignments as scheduled in order for NORCRC (Metra) to provide reliable and efficient service. Excessive employee absences, lateness and/or early quits, are costly, disruptive to our business operations and place an unfair burden on other employees.

Employees must report at a designated time and place as described by Job Bulletin and Assignment.

Rule Q of NIRCRC Employee Conduct Rules requires that 'Employees must report at the appointed time, devote themselves exclusively to their duties,

must not absent themselves, nor exchange duties with, or substitute others in their place, without proper authority.'

An investigative hearing was conducted on January 12, 2010. Following the hearing, the Carrier determined that the Claimant was guilty of the charges set forth in the notice of investigation. Claimant's employment with the Carrier was terminated effective January 25, 2010. In accordance with the Agreement, the discipline issued to the Claimant has been appealed to this Board for expedited handling.

The Board finds that there is substantial evidence to support the charges directed against the Claimant. Director of Engineering L. Powell testified that he informed the Claimant on December 23, 2009 to report for snow duty on December 26 and 27, 2009. According to Director Powell, the Claimant indicated that he would be there. Claimant then notified Foreman Palma that the crew was supposed to report at 2:00 a.m. on December 26, 2009 to begin snow removal duties.

The Claimant did not report for duty on December 26 or 27, 2009. Moreover, the Claimant failed to contact the Carrier to advise that he would not be reporting for work.

Claimant testified that he did not speak with Director Powell on December 23, 2009 but he acknowledged that he was informed of the snow duty by another supervisor who told him to "call the guys for snow duty and ...inform them that they're working on the 26th." The Organization contends that the Claimant's failure to report was based on a simple miscommunication. The Union suggests that Claimant, who was performing flagging duties, did not realize that he was supposed to report along with the crew doing the snow removal work.


As the foregoing discussion suggests, there is a factual dispute as to whether the Claimant was given a clear and direct order to report for duty. It is not the function of the Board to resolve factual conflicts or make credibility determinations. That function is performed by the hearing officer who conducts the investigation. On this record, we have no basis for overturning the hearing officer's determinations which are supported by substantial evidence.

The remaining issue centers on the propriety of the discipline imposed. Claimant's disciplinary history shows that Claimant waived investigation on July 7, 2009 and served a seven day suspension for violating Rule Q. Prior to that time, he had been issued lesser discipline in the form of a three day suspension on May 27, 2009 for various rule infractions, a one day deferred suspension on April 27, 2009 for violation of Rule Q, and a letter of reprimand on March 23, 2009 for a Rule Q violation.

The Board concurs with the Carrier that the Claimant was deserving of discipline. Claimant clearly is heading down an untenable path. However, disciplinary action is, and should be, intended to have a corrective effect on employees. Carrier has been attempting to correct the Claimant's behavior through progressive discipline. It is the opinion of the Board that the time served for the discipline imposed on the Claimant has served its purpose of correcting the Claimant's behavior. The Board directs the Carrier to return the Claimant to service without back pay but with all other rights unimpaired. Claimant should understand without any question that it is absolutely mandatory and necessary that he report for duty as scheduled, comply with Carrier rules and protect his assignment. This is the final opportunity for Claimant to correct his conduct. The Board expects him to fully live up to the obligation to his job.

AWARD

Claim sustained in accordance with the Findings.


ANN S. KENIS
Neutral Member

Dated this 26th day of February, 2010.