

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1122

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

NMB Case No. 8

This case involves Mr. Jorge L. Velez who is employed by Metra as a Trackman.

On November 8, 2000, Mr. Velez was hand-delivered a letter from Mr. John A. Pebler, Director of Engineering, Metra Milwaukee District, instructing him to attend an investigation on November 16, 2000, for the purpose of developing the facts, determine the cause, and assess responsibility, if any, in connection with alleged misconduct regarding the Rock Island/Metra Electric Engineering Maintenance of Way Rules Class and examination which Mr. Velez took on November 8, 2000.

Mr. Velez 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 8, 2000, is attached to this Award.

On November 9, 2000, Mr. Velez was hand-delivered a letter dated November 8, 2000, from Mr. John A. Pebler, Director of Engineering, Metra Milwaukee District, removing him from service effective immediately pending the investigation to be held on November 16, 2000. The letter was hand-delivered to

Mr. Velez by Mr. Laurence C. Powell, Maintenance Engineering Supervisor, Milwaukee District.

The letter of November 8, 2000, to Mr. Velez delivered by Mr. Powell on November 9, 2000, is attached to this Award.

The investigation was held on November 16, 2000.

Following the investigation, Mr. Velez received a Certified letter dated December 4, 2000, from Mr. Pebler advising him that he was dismissed from service for violation of Employee Conduct Rule N, paragraph 2, Item 4 and Metra Maintenance of Way Rule 1.6.

The letter of December 4, 2000, is attached to this Award.

The transcript of the investigation held on November 16, 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:

At issue in this dispute is the Maintenance of Way Rules Class and examination given by Mr. Daniel Denton on November 8, 2000, to 40 Employees of Metra.

Mr. Jorge Velez was one of the employees taking the test, and the record shows that he failed the test. The test contained 100 questions, and Mr. Velez answered 61 correctly thus missing 39.

Mr. Denton testified that he had conducted approximately 20 rules classes and exams prior to November 8, 2000. In all of those classes, the questions in the exams were in the same order.

Mr. Denton further testified that the exam given on November 8, 2000, had the same questions but were placed in different order.

Mr. Denton testified that there were 56 questions on the new test that were in the same order.

Mr. Velez answered all 56 correctly. Of the remaining 44 questions which were in a different order, Mr. Velez answered 5 correctly and missed 39.

Mr. Denton testified that after reviewing the test results from the exam taken by Mr. Velez, he felt that there was evidence of serious irregularities.

Mr. Denton also testified that he and three Rules Department officials reviewed the test results of Mr. Velez and all others that failed the exam on November 8, 2000.

The sequence of events and circumstances in this dispute are very similar to those in NMB Cases 5, 6 and 7. In each dispute, the common factor is a change in testing procedures unilaterally made by those administering the exams.

The changes were made as a result of overwhelming evidence and numerous statements made by employees that irregularities were taking place in

Rules Exams given to employees. While there has been no testimony in any of the cases including this one before us that those giving the exams witnessed any cheating, the results of the exam of Mr. Velez in this dispute clearly point out that there is no logical explanation for the wide variance in his test scores when all the questions were the same but in different order.

In this instant dispute, Mr. Velez failed the test on November 8, 2000, and was unable to explain the reasons for missing so many questions when he had previously passed a similar test on November 3, 2000.

The circumstances in this case prompted the Carrier's action in initiating an investigation to determine what took place as there has been sufficient reason supported by evidence in prior similar cases that irregularities were taking place in Rules Exams administered in the past several months.

We can be hopefully optimistic that this dispute which contains evidence of the same irregularities as were present in NMB Cases 5, 6 and 7, will be the last of its type as all employees recognize that participating in or engaging in any questionable practice that cannot be explained will not be tolerated nor should they be as it reflects negatively on the individual involved, his craft, and the Carrier that he works for.

We have reviewed the record and the personal work record of Mr. Velez. While we cannot ignore the evidence before us, the discipline of permanent dismissal of Mr. Velez is not warranted.

Accordingly, it is the decision of this Board that Mr. Velez 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 in the future that are fair and equitable so as to avoid any possibility that irregularities can occur.

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

Charles J. Chamberlain
Neutral Member

Date February 8, 2001

Metra Milwaukee District
2931 West Chicago Avenue
Chicago, IL 60622

November 8, 2000

HAND DELIVERED

Mr. Jorge L. Velez
4751 N. Monticello - Apt. #3F
Chicago, IL 60625

Emp. #6615

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 9:00 a.m., Thursday, November 16, 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 Rock Island/Metra Electric Engineering Maintenance of Way Rules Class and examination which you took on November 8, 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 A. 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 K. Rabe
D. S. Mogan
M. S. Wimmer, G/C
A. F. Scott, L/C

D. Denton - Please arrange to appear as a witness

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1 STATE OF ILLINOIS)

2) SS

3 COUNTY OF C O O K)

4 I, VERNITA HALSELL-POWELL, Registered
5 Professional Reporter and Notary Public, County of Cook,
6 State of Illinois, do hereby certify that the foregoing
7 hearing was taken before me at the time and place
8 hereinbefore set forth.

9 I further certify that the testimony then
10 given was reported by me stenographically; subsequently
11 with computer-aided transcription, produced under my
12 direction and supervision; and that the foregoing is a
13 full, true, and correct transcript of my original
14 shorthand notes.

15 I further certify that I am not related to nor
16 counsel for any of the parties and I have no interest in
17 the outcome thereof.

18 IN WITNESS WHEREOF, I have hereunto set my
19 hand and seal this 19th day of November, 2000.

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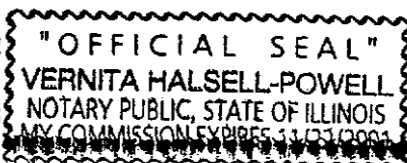
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Vernita Halsell Powell
VERNITA HALSELL-POWELL, CSR-084-001831
Registered Professional Reporter
Notary Public, County of Cook
My Commission Expires: November 22, 2001



SBA 11a2
Case 8



Metra Milwaukee District
2931 West Chicago Avenue
Chicago, IL 60622

November 8, 2000

HAND DELIVERED


Mr. Jorge L. Velez Emp. #6615
4751 N. Monticello - Apt. #3F
Chicago, IL 60625

Dear Mr. Velez:

You are hereby removed from service, effective immediately,
pending an investigation for your alleged violation of Metra's
Employee Conduct and Maintenance of Way Rules.

Please turn in all Company property, keys, passes, and
identification cards issued to you to Mr. J. A. Pebler, Metra
Milwaukee District.

Sincerely,


J. A. Pebler
Director of Engineering
Metra Milwaukee District

cc: V. L. Stoner
W. K. Tupper
R. C. Schuster
G. Washington
C. Cary
J. Barton
D. S. Mogan
K. Rabe
M. S. Wimmer, G/C
A. F. Scott, L/C

ENC:DOCSINVESTIG0005.JLV

NORTHEAST ILLINOIS RAILROAD CORPORATION

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

Results of Investigation

US Mail & Certified Mail

**Mr. J. Velez, Trackman
Morton Grove**

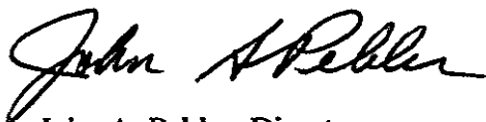
December 4, 2000

A review of the transcripts of the investigation held on November 16, 2000 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 Metra Maintenance of Way Rule 1.6

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

Yours truly,



**John A. Pebler, Director
Milwaukee District Engineering
(312) 322-4101**

JAP/jr

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

NORTHEAST ILLINOIS REGIONAL COMMUTER RAILROAD CORPORATION

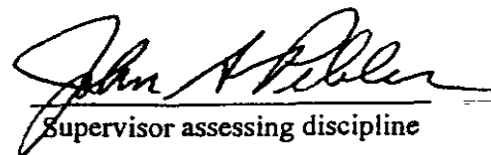
NOTICE OF DISCIPLINE

J. Velez	Morton Grove	John A. Pebler
Employee Name	Work Location	Supervisor assessing discipline

DATE: December 4, 2000**X FORMAL INVESTIGATION**
HELD ON NOVEMBER 16, 2000**WAIVER OF INVESTIGATION**

Has indicated your responsibility in connection with the violation of Metra Conduct Rule N, paragraph 2, Item 4 and Metra's Maintenance of Way Rule 1.6, when you were dishonest on November 8, 2000 at KYD. 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>December 4, 2000</u> . You must return all company property.	

cc: Metra PersonnelUnion Witness
Supervisor assessing discipline