

# International Brotherhood of Electrical Workers



MICHAEL A. GIANANTE  
General Chairman

JOSEPH P. NOVAK  
Vice Chairman

## System Council No. 7

239 McClellan Street  
Pennsport Mall  
Philadelphia, PA 19148  
Office: (215) 336-1053 • Fax: (215) 336-1057

ARTHUR J. DAVIDSON  
Secretary-Treasurer

JAMES E. MEYER  
Asst. General Chairman

February 14, 2005

Mr. Raymond Burney  
Director - Labor Relations  
MTA Metro-North Railroad  
345 Madison Avenue  
New York, NY 10017

Re: Metro-North Operating Procedure, Attendance-Represented Employees  
Effective date June 9, 1988, Revised Date January 1, 2005.

Dear Sir:

I am in receipt of the aforementioned Metro-North Attendance Policy. Upon review of this Policy, we find the Policy to be vague, ambiguous, and excessive in nature. Moreover, the Policy inappropriately penalizes electrical workers who exercise their due process right under Rule No. 6 "Discipline" as contained within the Controlling Agreement. Accordingly, the IBEW takes serious exception to this Policy of which is clearly of an arbitrary and capricious nature.

The Policy states: "employees are permitted to use sick leave for personal illness or injury, or care for ill or injured dependant family members." As you are aware, the content of this provision as contained within the Policy is also contained in Rule 11-B-1 (b) of the Controlling Agreement, which states in relevant part:

"Employees shall be able to utilize any and all sick days in their bank for personal illness or injury or to care for any sick or injured family members provided that the employee is primarily responsible for the care of such family member."

However, contrary and in opposition to the content of Rule 11-B-1(b), the Policy states that employees whose use of sick days exceeds reasonable levels will be considered as having unsatisfactory attendance and therefore will be subject to discipline. The Policy states in pertinent part:

"Three occurrences of absences within any thirty calendar period or four occurrences of absence within any six month period, with an 'occurrence' being

Mr. R. Burney  
Metro-North Railroad

February 14, 2005

consecutive work days that an employee does not report for work due to illness or injury.”

To illustrate the arbitrary and biased nature of the Policy: An employee who is absent for three occurrences in a thirty calendar day period due to personal illness or due to the necessity to care for a family member, under the policy, will be considered to have unsatisfactory attendance and therefore may be subject to the imposition of discipline. This results in an unfair, unreasonable consequence, which will be imposed upon an employee who is exercising a contractually mandated benefit.

Such a consequence is not what the Parties’ intended when the Sick Leave provisions were achieved through the Collective Bargaining Process. Clearly, it is not reasonable or equitable for Metro-North to impose discipline upon electrical workers who have a legitimate right to use a contractually mandated sick day.

The Policy further states that employees who admit guilt and sign a waiver of trial will be given less discipline than an employee who proceeds to trial. This position is reprehensible. It is clear that such an extreme, abusive measure by Metro-North is an attempt to achieve restrictions on the use of contractually mandated sick days of which Metro-North could not achieve through the Collective Bargaining Process.

Moreover, it is apparent that Metro-North’s objective here is to discourage employees from exercising their due process rights with respect to the disciplinary process as contained within Rule “6” “Discipline” of the Controlling Agreement.” Hence, the Company in affect, has taken the invalid position that an employee will receive a greater level of discipline, with respect to the use of contractually mandated sick days and or general absenteeism, if the employee avails themselves of their contractual due process entitlement pursuant to the Controlling Agreement.

Consequently, Metro-North’s position that employees’ will be disciplined to a greater degree if they exercise their contractual due process rights, is no more than a desperate attempt by Metro-North to encourage employees not to use contractually mandated sick days. Upon adjudication of this issue, we are confident that the Company’s position here will be considered a unilateral change to the provisions of the Controlling Agreement and therefore viewed to be entirely without merit.

Moreover, the Policy states that its effective date is June 9, 1988, revised January 1, 2005. Be advised, previous to the IBEW receiving the 1/1/05 revised Attendance Policy, we were unaware of the existence of any such Policy being in existence on Metro-North.

Mr. R. Burney  
Metro-North Railroad

February 14, 2005

With respect to this position, for many years the IBEW has asked Metro-North if there was a uniform Attendance Policy that was applied system wide. Metro-North has consistently failed to comment on or produce such a Policy. Accordingly, we question the validity of Metro-North's assertion that the Attendance Policy has been in effect since 6/9/88.

With further respect to the Attendance Policy: The arbitral process within the railroad industry has consistently held that disciplinary cases regarding employee attendance, whether it be the use of a contractually mandated sick days or an employee's absence due to other causes, are fact sensitive when mitigating circumstances are considered. Therefore, the ambiguous, unreasonable, abusive nature of the Metro-North Attendance Policy is inconsistent with the standards set forth within this industry.

Be advised, in the event that Metro-North applies the content of this erroneous Policy upon Electrical Workers, we will adjudicate each and every case of this nature to arbitration.

Yours truly,



Michael A. Giansante  
General Chairman

Cc: A.J. Davidson  
S. Milone  
A. Landisio  
J. Curtiss  
R. Horowitz