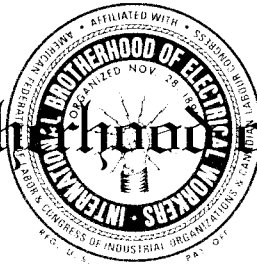


International Brotherhood of Electrical Workers



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May 12, 2005

CERTIFIED MAIL;
No 7002 0450 0002 7307 7940

Mr. Anthony J. Bottalico
General Chairman
Association of Commuter Rail Employees
420 Lexington, Avenue, Suite 215
New York, NY 10017

Dear Mr. Bottalico:

I am in receipt of the message you posted on the ACRE web site regarding what you characterize as the Metro-North 2005 "Sicktime Policy" [sic]. In your posting, you assert that the IBEW is to blame for Metro-North instituting this policy. The assertions and implications as contained within your web site (posting) are false, unduly misleading to your membership and entirely without merit. It is apparent that you have used an IBEW/Metro-North arbitration award as a feeble excuse not to challenge the Metro-North Attendance Policy.

With respect to this issue, you state the following in your web site posting:

"[The] IBEW representing electrical workers took a sick time case to arbitration and lost. The loss by the IBEW resulted in the arbitrator's language being used by Metro-North to create this policy."

"[It] is unfortunate another union has impacted our members by choosing to bring a less than stellar case before an arbitrator."

"[We] have two lead cases we believe are very strong, and we look forward to our chance at undoing the IBEW case that lead to the carriers [sic] policy."

The foregoing statements made by you are an inaccurate description of what you characterize as:

- 1) The Metro-North "Sick Time Policy".

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- 2) What you consider to be precedent setting regarding arbitration awards in the railroad industry.
- 3) The facts as contained in an IBEW/Metro-North arbitration award concerning the issue of Metro-North imposing discipline on an employee who used "sick days."

Clearly, your posting is no more than a pathetic excuse by you and your Organization not to challenge the Metro-North Attendance Control Policy. Furthermore, your reference to the Metro-North 2005 "Sick Time Policy" is an erroneous description of the Metro-North Policy at issue. The Metro-North Policy is defined by Metro-North as the "Operating Procedure, Attendance-Represented Employees." Hence, the Policy does not exclusively involve "sick time" as you imply, but also involves Metro-North's policy regarding absenteeism and lateness.

Moreover, the IBEW arbitration award you refer to is Special Board of Adjustment No. 934, Award No. 381. It is apparent by the content of your posting that you did not read the Award or you did not comprehend what you read regarding the facts as contained within N.M.B. Case No. 411, Award No. 381.

For your edification, in Case 411, Metro-North imposed the discipline of a fifteen day suspension upon an electrical worker who was absent three times and was late two times. The three days absent of which were contained within the trial charge were used by the employee as contractually mandated sick days. The Metro-North trial charge also stated that in light of and considering the employee's past attendance record, the days absent and days late constituted unsatisfactory attendance.

When the IBEW advanced Case No. 411 to the Board, we argued that the Appellant should not be subject to disciplinary jeopardy because the three days absent as contained within the trial charge were contractually mandated sick days of which the employee received sick day compensation from Metro-North. Therefore, in Case 411, the IBEW asserted that the compensated sick days could not be considered by Metro-North as constituting unsatisfactory attendance because they were a contractually mandated benefit.

Additionally, within our submission before the Board, we cited the holding in arbitration award: In re St. Joseph Mercy Hospital and American Federation of State, County and Municipal Employees, which held that an employer cannot impose discipline upon an employee who exercised their right to a contractually mandated benefit.

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In S.B.A. No. 934, Award No. 381, Arbitrator Rinaldo stated that he declined to follow the arbitrator's rational in In re St. Joseph Mercy Hospital, as "being against the weight of arbitral authority." Hence, Arbitrator Rinaldo in Award No. 381 held that in view of the Appellant's previous poor attendance history, in conjunction with the periods of lateness and the days absent which were used as paid for sick days, that the Carrier sustained its burden of proof of showing unsatisfactory attendance. Accordingly, the holding in Award No. 381 is not solely about an employee being disciplined for taking sick days. But rather; the holding in the Award also involved the Arbitrator's consideration of the employee's previous attendance record and the days late which were contained within the trial charge. It is obvious that you do not reflect the true nature of Award No. 381 in your vague reference to it within your web site.

Moreover, subsequent to Award No. 381, the IBEW progressed another case to arbitration regarding the issue of Metro-North assessing discipline upon an employee who used contractually mandated sick days in conjunction with other absenteeism. In S.B.A No. 934, Award No. 426, a different arbitrator, Arbitrator Deinhard, held that she agreed with the holding in Award No. 381 and stated that an employer may discipline an employee for absences that are associated with contractual mandated sick days when considering the issue on a "case by case basis."

The IBEW disagrees with the decisions rendered in Award No. 381 and 426. Moreover, in response to Metro-North's revised January 1, 2005 Attendance Policy, the IBEW informed Metro-North in writing that we disagree with the Attendance Policy, the reasons why we disagreed with the Policy and that we intend to progress each and every case to arbitration when Metro-North imposed discipline upon our Members pursuant to the terms of the Policy. We have attached our 2/14/05 letter regarding this issue.

With further respect to your web posting: It is clear that you have been unduly influenced and taken in by Metro-North's rhetoric regarding its Attendance Policy and how S.B.A No. 934 Award Nos. 381 and 426 are difficult to overcome. As you should be aware, the Railway Labor Act and our respective Collective Bargaining Agreements' provide that a Labor Organization may progress a minor dispute, such as the issue at hand, to arbitration. In the railroad industry, there is no precedent regarding arbitration awards; hence, the legal principle of "stare decisis" does not apply to arbitration awards. In other words, because one arbitrator rules a specific way in one case does not mean that a different arbitrator cannot rule entirely different in another case where the issues are identical. Accordingly, your assertion that the IBEW is responsible for Metro-North

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creating its Attendance Policy is at best an illusion on your part and an excuse not to challenge the Metro-North Policy.

It is unconscionable that you, representing a Labor Organization, have blamed another Labor Organization for your own inaction in challenging the Metro-North Attendance Policy. Based on the content of your web posting, I question your motives with respect to this issue. Rest assured, contrary to your assertions regarding the IBEW progressing a "less than stellar case to arbitration", the IBEW will represent its Membership to the fullest extent. Furthermore, the IBEW will not selectively adjudicate disciplinary cases to arbitration, as you suggest, in fear of getting an unfavorable arbitration award. We have a duty of fair representation to our Members of which we will continue to uphold. I suggest that you do the same.

Sincerely,



Arthur J. Davidson
Secretary-Treasurer
Labor Member, S.B.A No. 934

attachment:

- 1) ACRE Web Site Posting.
- 2) IBEW 2/14/05 letter to Metro-North
which takes exception to the
Metro-North Attendance Policy.

cc: M. Giansante
S. Milone
A. Landisio
R. Horowitz
J. Curtiss