

NATIONAL RAILROAD **ADJUSTMENT BOARD**

THIRD DIVISION

Award Number 22229
Docket Number MW-22197

Abraham Weiss, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**
(Consolidated Bail Corporation **-(Former Penn Central**
(**Transportation Company**)

STATEMENT OF CLAIM: "Claim of the System **Committee** of the Brotherhood
that:

(1) The disciplinary demotion of Track Foreman **B. A. Williams** and his pa-ant disqualification as track for- **and** assistant track foreman was excessive, without just and proper cause **and** was **an** abuse of justice and discretion (System Docket - **310/Eastern** Region - Harrisburg Division Case H-1).

(2) Mr. **B. A. Williams'** seniority as track **foreman** and assistant track for- be restored and unimpaired **and** he be allowed the difference between what he would have received at the track foreman's rate and what he was paid in a lower rated position **from** December 19, 1975 until he is returned to work as a track **foreman** with seniority as such unimpaired."

OPINION OF BOARD: The Claimant was employed as a Track Foreman **and** was involved in an incident which occurred **on** December 19, 1975, which ultimately led to his **discipline** by permanent disqualification as Track Foreman and Assistant Track Foreman. **He** was charged with a violation of **Rule** 811 of Carrier's "Rules for Conducting Transportation" and specifically, for failure to clear a main track prior to expiration of the time limit granted by Track Car **Permit**.

Claimant's position hinges primarily **on** the technical defense of condonation. It is asserted his failure **in** this instance is quite common on this Carrier and no disciplinary action was previously initiated; therefore, his negligence should be excused. 2

While there is some testimony in the record purporting to establish the frequency of this occurrence, it is by no means persuasive that Carrier officers were aware of such incidents, or if aware, that they failed to take appropriate action. ✓

4 We feel there is sufficient evidence to establish Claimant's responsibility for the infraction; however, we are not **convinced** the harsh **penalty** of **permanent** disqualification was justified. The Claimant's testimony that the oversight occurred because he was engaged **in** a multiplicity of jobs carries some weight **in** mitigation. The Claimant should be reinstated to the rank of Track Foreman **and** Assistant Track Foreman, with seniority unimpaired, but without compensation.

FINDINGS: The Third Division of the Adjustment Board, **upon** the whole record **and** all the evidence, **finds and** holds:

That the parties waived oral hearing;

That the Carrier and the **Employees involved** in **this** dispute are respectively Carrier **and Employees** within the **meaning** of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the discipline was inappropriate.

A W A R D

Claim sustained to the extent indicated **in** the **Opinion**.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this **15th** day of **November 1978**.

