

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24762  
Docket Number MW-25154

Paul C. Carter, Referee

PARTIES TO DISPUTE: ( (Brotherhood of Maintenance of Way **Employees**  
(Consolidated Rail Corporation (former Penn Central  
( Transportation Company)

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

(1) The dismissal of **Trackman** W. M. Cutler for violation of 'Rule L' was excessive (System Docket 721).

(2) The claimant shall be reinstated with seniority and all other rights unimpaired."

OPINION OF BOARD: Claimant was a former trackman, with about five years of service, headquartered at Butler, Pa., under the supervision of Assistant Supervisor Production J. P. Singer.

On July 28, 1981, claimant took a Company bus from the camp site without permission, allegedly for the purpose of taking some **money** to his mother in Pittsburgh. The contention is that he **simply** "borrowed" the bus.

The Carrier states that about **10:30** P.M., July 28, 1981, claimant was arrested by Pittsburgh police, while driving the Carrier's bus. Claimant was notified to attend a trial on August 11, 1981, on the charge:

"Violation of Rule L of Conrail's Rules for Conducting Transportation when you were found with Vehicle M1174 by Pittsburgh Police Department at **10:30** p.m. on July 28, 1981, at **Perryville** Avenue and Burgess Street, Pittsburgh, Pa."

Carrier's Rule "**L**" referred to in the letter of charge, reads in part:

"Deliberate misuse or damage to Company property is prohibited.

The unauthorized possession, removal or disposal of any material . from railroad property or property served by the railroad is prohibited."

The trial, or investigation, was held as scheduled, with claimant present and represented. A copy of the transcript has been made a part of the record. From our review we find that the trial was conducted in a fair and impartial manner. Following the trial, claimant was dismissed from the service.

From our review of the record, including claimant's statement at the trial, we are convinced that claimant did take the Company bus for his personal use on July 28, 1981, without the permission of any supervisory personnel. However, we are not convinced that claimant intended to or was attempting to steal the bus,

or that theft was actually involved. Severe discipline was warranted against claimant; however, permanent dismissal was excessive. The time that claimant has been out of service should constitute sufficient discipline. We will award that claimant be restored to the service, with seniority and other rights unimpaired but without any compensation for time lost while out of the service. Actually, compensation for time lost is not included in the Statement of Claim before the Board.

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 excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

  
Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 13th day of April, 1984.

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JUN 13 1984  
U.S. DEPT. OF JUSTICE