

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25066  
Docket Number NW-24918

I. M. Lieberman, 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 thirty (30) days of suspension imposed upon **Trackman** F. K. Williams and the sixty (60) days of suspension imposed upon Foreman G. **Migliorisi** and **Trackman** J. E. White for 'refusal to perform **service** in connection with derailment at West Conway, Pa.' was without just and sufficient cause (System Docket 612).

(2) The claimants shall be compensated for all **wage** loss suffered and the charges shall be stricken from their records."

OPINION OF BOARD: This dispute was triggered by a main line derailment which took place on March 17, 1980 at West Conway, Pa. The derailment resulted in extensive switch and track damage, among other things. Claimants herein were members of a Maintenance of Way Gang, consisting of ten men, which was called to **perform** **derailment** duty. Shortly after the gang arrived on the scene of the derailment there was a heavy downpour of rain and the men sought refuge in their bus. They were instructed to get off the bus and start working but refused to do so, resulting in this dispute. Petitioner alleges that the men were told to get off the bus in the heavy rain with no specific duties to perform since the efforts at the site were just being organized. Carrier does not **agree** and notes that the crew were well aware of what was expected at a derailment.

Seven members of the gang waived their right to an investigation and were reinstated a week later (**all** having been removed from service pending the investigation) with no further discipline. Claimants were disciplined, following a guilty finding after the investigation, as indicated in the Claim.

An evaluation of the evidence contained in the record of the investigation clearly leads to the conclusion that Carrier was correct in its determinations of guilt. The Claimants did refuse to perform as their supervision directed. The only remaining issue is that of the nature of the penalty imposed. While it is clear that dismissal is obviously one of the alternatives available to Carrier in instances of insubordination, in these cases, suspension was chosen. The facts indicate, however, that the penalty was different for the three Claimants with the only rationale being that one was a supervisor and White had functioned as a supervisor in the past, thus justifying more severe punishment. The Board does not **agree**. There was no justification for the disparate treatment accorded the two **trackman** and furthermore, under the circumstances sixty days was too 'severe a penalty for the foreman. For that reason the foreman's penalty shall be reduced to forty five days and White's penalty shall be reduced to thirty days similar to the suspension of Williams. The **two** Claimants will be made whole for losses sustained due to the excessive discipline imposed.

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:

  
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Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 4th day of October 1984.