

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 26949  
Docket No. MW-26477  
88-3-85-3-216

The Third Division consisted of the regular members and in addition Referee Gil Vernon when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**  
(Consolidated Rail Corporation

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

(1) The thirty (30) days of suspension imposed upon Track Inspector/Foreman J. Price for alleged 'Failure to take immediate remedial action on the critically deteriorated tie condition in the curve at M.P. 38.1 on the Cape May Secondary at Richland, N.J. when you patrolled this track on February 6th, 1984, which resulted in the derailment of Train WPCA-30 at 4:10 P.M. on February 12, 1984' was unwarranted and on the basis of unproven charges (System Docket CR-733-D).

(2) The claimant's record shall be cleared of the charge leveled against him and he shall be compensated for all wage loss suffered."

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

On February 23, 1984, the Claimant was instructed to appear for a hearing in connection with charges reading:

"Failure to take immediate remedial action on the critically deteriorated tie condition in the curve at M.P. 38.1 on the Cape May Secondary at Richland, N.J. when you patrolled this track on February 6th, 1984, which resulted in the derailment of Train WPCA-30 at 4:10 P.M. on February 12, 1984."

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Subsequent to the investigation the Claimant was assessed the discipline now on appeal before the Board.

After reviewing the record, the Board is convinced the Claimant had some responsibility for the derailment. However, because there were other contributory factors and because the Claimant has a 34 year record of good employment as a track inspector/foreman we **must** also conclude that a **30-day** suspension is excessive.

Accordingly, the discipline is reduced to 15 days and the Carrier is directed to compensate the Claimant for the difference.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT **BOARD**  
By Order of Third Division

Attest: *Nancy J. Dover*  
Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 30th day of March 1988.