April 11, 1972

Mr. L. H. Greene, Jr.
Eastern Zone Supervisor
Brotherhood of Sleeping Car Porters
103 E. 125th St., Suite 610
New York, New York 10035

Mr. L. J. Shackelford, Jr.
International Vice President
Brotherhoodof Sleeping Car Porters
431 S. Dearborn St., Suite 1224
Chicago, Illinois 60605

Dear Brothers:

As you know, all increases in pay and anything else that cost money by the Penn Central has to have court approval. Therefore, this is to advise, that on March 28, 1972, the application for approval of the new Travelers Group Policy Contract GA-23000 was approved in the U. S. District Court for the eastern district of Pennsylvania by District Judge John P. Fullam,and the trustees were authorized to comply with it.

Fraternally yours,

C. L. Dellums

CLD:cr

LAW OFFICES
MULHOLLAND, HICKEY & LYMAN
SUITE 620 TOWER BUILDING
PHONE STERLING 3-5366 (AREA CODE 202)
WASHINGTON, D.C. 20005

EDWARD J. HICKEY, JR.
WILLIAM J. HICKEY
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WILLIAM E. FREDENBERGER, JR.

TOLEDO OFFICE
741 NATIONAL BANK BLDG.
TOLEDO, OHIO 43604

CLARENCE M. MULHOLLAND
RICHARD R. LYMAN
EDWARD J. McCORMICK, JR.
DONALD W. FISHER
RICHARD M. COLASURD
WILLIAM J. MOORE

April 5, 1972

TO: All Chief Executives

RE: Penn Central Reorganization - U.S.D.C. ED Pa. - No. 70-347; Petition of Trustees for Approval of Travelers Group Policy Contract GA 23000

Gentlemen:

Enclosed is a copy of Order No. 629 issued on March 28, 1972, by Judge John P. Fullam in the Penn Central Reorganization approving the Trustees' Petition seeking authority to comply with an agreement extending Travelers Group Policy Contract GA 23000 providing for group insurance benefits.

This agreement was executed between the National Railway Labor Conference representing the Penn Central and employee organizations on February 24, 1972, and provides for the renewal of Travelers Group Policy Contract GA 23000 for a period of two years commencing March 1, 1972.

Should you have any question with respect to this matter, please refer it to this office.

Very truly yours,

MULHOLLAND, HICKEY & LYMAN

By Geoffrey N. Zeh
Geoffrey N. Zeh

GNZ:ls

Enclosure

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In the Matter of	:	In Proceedings for the Reorganization of a Railroad
PENN CENTRAL TRANSPORTATION COMPANY,	:	
Debtor	:	No. 70-347

ORDER NO. ~~194~~ 629

APPROVING A LABOR AGREEMENT PROVIDING GROUP INSURANCE BENEFITS

AND NOW, this 28th day of March, 1972 in consideration of the Petition of the Trustees for approval of and authority to comply with a labor agreement providing group insurance benefits;

It is ORDERED that the agreement referred to in the Petition for this Order is approved and the Trustees are authorized to comply therewith.

JOHN P. FULLAM
District Judge

LAW OFFICES
MULHOLLAND, HICKEY & LYMAN
SUITE 620 TOWER BUILDING
PHONE STERLING 3-5366 (AREA CODE 202)
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RICHARD R. LYMAN
EDWARD J. McCORMICK, JR.
DONALD W. FISHER
RICHARD M. COLASURD
WILLIAM J. MOORE

March 22, 1972

TO: All Chief Executives

RE: Penn Central Reorganization - U.S.D.C. ED Pa. - No. 70-347 - Petition of Trustees for Approval of Travelers Group Policy Contract GA 23000

Gentlemen:

Enclosed is a copy of Order No. 609 issued by Judge John P. Fullam in the Penn Central Reorganization setting for hearing on March 27, 1972, at 10:00 a.m. a Petition of the Trustees for approval of and authority to comply with a labor agreement extending Group Policy Contract GA 23000 with the Travelers Insurance Company providing for hospital, medical, surgical, major medical and life insurance benefits for covered active employees and their dependents and certain continuing life insurance for covered retiring employees.

This agreement was executed between the National Railway Labor Conference representing the Penn Central and employee organizations on February 24, 1972, and provides for the renewal of Travelers Group Policy Contract GA 23000 for a period of two years commencing March 1, 1972.

Should you have any question with respect to the Trustees' Petition, please refer it to this office.

Very truly yours,

MULHOLLAND, HICKEY & LYMAN

By Geoffrey N. Zeh
Geoffrey N. Zeh

GNZ:ls

Enclosures

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In the Matter of	:	In Proceedings for the Reorganization of a
PENN CENTRAL TRANSPORTATION COMPANY,	:	Railroad
Debtor	:	No. 70-347

PETITION OF THE TRUSTEES FOR APPROVAL OF AND AUTHORITY TO COMPLY WITH A LABOR AGREEMENT PROVIDING GROUP INSURANCE BENEFITS

The Trustees represent:

1. On February 29, 1972, a national railroad labor contract expired to which the Debtor was a party. It provided for the financing of group insurance benefits for substantially all railroad employees in the United States represented by labor organizations, including such employees of the Debtor. It was the latest in a series of such contracts to which the Debtor and its predecessors were parties providing for such financing beginning March 1, 1955. The financing is provided by monthly payments for each active covered employee.

2. Pursuant to the provisions of these agreements a policy of insurance issued by The Travelers Insurance Company, designated as Group Policy Contract GA--23000, has provided hospital, medical, surgical, major medical, and life insurance protection for covered active employees and their dependents, and certain continuing life insurance protection for covered retiring employees. On-duty injuries are insured for which an additional payment is made.

3. The said contract and policy being due to expire on February 29, 1972, the parties, including the Debtor, served notices under the provisions of the Railway Labor Act proposing amendments to and an extension of the contract and policy.

4. Negotiations on behalf of the Debtor were conducted by the National Railway Labor Conference.

5. On February 24, 1972, an agreement (Agreement) was signed in settlement of the dispute. A copy will be exhibited to the Court at the hearing on this Petition.

6. The Agreement provides:

(a) Group Policy Contract GA--23000 is renewed for a period of two years from March 1, 1972.

(b) A relatively minor improvement in certain existing benefits is to be made.

(c) There will be an immediate increase in the basic payment for each covered active employee of $12.61 a month from $39.40 to $52.01. The payment for on-duty injuries is increased $1.09 a month from $1.63 to $2.72, 20 cents of which may be refunded if claims experience in the first contract year is favorable. In the second contract year the basic payment will remain the same but the payment for on-duty injuries may be increased an additional 47 cents a month if claims experience in the first contract year is unfavorable. These payments are subject to further limited increases should government control of health care costs be discontinued or substantially relaxed during the two year contract period.

(d) A Standing Committee is created to explore methods of minimizing the cost of providing benefits.

(e) Court approval is required with respect to railroads in the hands of trustees.

(f) No new proposals relating to health and welfare benefits or the financing thereof

may be made to be effective prior to March 1, 1974. If agreement is not reached prior to that date on a further extension of the insurance program, contributions will continue at the then current rate until changed under the provisions of the Railway Labor Act and agreements will be made to provide such insurance as can then be financed from such payments.

7. The estimated increase cost to Penn Central under the provisions of the Agreement during the first contract year would be between $12.7 million and $12.9 million and during the second contract year between $12.7 million and $13.4 million.

8. The Trustees are advised and therefore allege that pursuant to present rules and regulations under Phase II of the Economic Stabilization Program no approval or other action by the Pay Board is required before placing the Agreement into effect.

9. The Trustees are of the opinion and therefore recommend that since costs under the Agreement are subject to only minor variation over the anticipated life of the contract, that the Agreement should now be approved.

WHEREFORE, the Trustees pray that Orders be entered herein:

1. Fixing a time and place for hearing to be held on this Petition;

2. Approving the Agreement and authorizing the Trustees to comply with the terms thereof.

FOR THE TRUSTEES

By _____
One of the Trustees

Ralph W. Pickard
Attorney for Trustees
1138 Six Penn Center Plaza
Philadelphia, Pa. 19104

Dated: March 14, 1972

VERIFICATION

COMMONWEALTH OF PENNSYLVANIA :
: SS
COUNTY OF PHILADELPHIA :

Jervis Langdon, Jr. , being duly sworn, deposes and says that he is a Trustee of the property of Penn Central Transportation Company, Debtor, and is duly authorized by his fellow Trustees to make the above Petition on their and his behalf, and that the statements contained in said Petition are true and correct to the best of his knowledge, information and belief.

Jervis Langdon

SWORN to and SUBSCRIBED
before me this 14th day
of March, 1972.

Alfonse J. DiGregorio
NOTARY PUBLIC
Philadelphia County, Philadelphia
My commission Expires: August 7, 1972

II

THE MEASURE OF DAMAGES FOR BREACH OF THE AGREEMENT IS ACTUAL LOSS NECESSARILY INCURRED BY THE INJURED PARTY: NRAB HAS NO JURISDICTION TO CREATE PENALTIES.

The general rule is that damages for breach of contract are limited to the pecuniary loss necessarily sustained by the injured party. In Perry vs. U. S., 294 U. S. 330, 354, the Supreme Court has given us this clear statement of the rule:

> ". . . The action is for breach of contract. As a remedy for breach, plaintiff can recover no more than the loss he has suffered and of which he may rightfully complain. He is not entitled to be enriched."

In United Protective Workers vs. Ford Motor, 223 F.2d 49 (C.A. 7, 1955), the claim was based on the alleged breach of a collective bargaining agreement, and the court said that:

> ". . . a party whose contract has been breached is not entitled to be placed in a better position because of the breach than he would have been in had the contract been performed."

This is the firmly established law both in the courts and on the NRAB. Second Division Award 4974 (Johnson) gives us this statement of the rule and its application to a particular case:

> ". . . Under the common law rules of damages for breach of employment contracts as declared by the federal courts, Claimant is entitled only to actual earnings lost according to the conditions of his employment. . . . the record does not show that Claimant was the employee entitled to a call for overtime on that day, and indicates that he was subject to call only in an emergency. Here there was no emergency. Consequently, claim 2 must be denied."

A claimant is not only limited to actual pecuniary loss necessarily sustained, but he has the burden of proving the loss. "The Petitioner has the obligation to show wherein he has been damaged by a violation of the bargaining Agreement." Award 13150 (McGovern).

The authorities are in complete agreement that the NRAB has no jurisdiction to grant punitive damages. It is true that in a few NRAB awards there is erroneous dicta to the effect that there must always be a penalty in order to give vitality to a rule and the NRAB can create such a penalty; but such dicta has no support in the statutes, no support in the decisions of the Federal courts, and no support in the awards of capable referees.

A quasi-judicial agency has power to assess punitive damages only when such power is expressly conferred upon it by statute. Award 10963 (Dorsey) contains this correct anaylsis of the law:

> ". . The course of decisions in the Supreme Court in NLRB vs. Jones & Laughlin Steel Corp., 301 U. S. 1; NLRB vs. Mackay Radio & Telegraph, 304 U. S. 333; and, Phelps Dodge Corp. vs. NLRB, 313 U. S. 177, makes clear that statutory quasi-judicial agencies cannot impose penalties, punitive in nature, unless such power is expressly conferred. Cf. Stewart & Bro. vs. Bowles, 322 U. S. 398, wherein the Court states that 'persons will not be subjected [to penalties] unless the statute plainly imposes them. . . it is for Congress to prescribe the penalties for the laws which it writes.'
>
> "* * *
>
> "A reading of RLA discloses no provision which vests the National Railroad Adjustment Board with the power to impose a penalty for violation of a collective bargaining contract. Indeed, the reading establishes the contrary; for, when the Congress chose to provide for penalties it did so expressly, named the forum, and preserved Constitutional rights [RLA Sec. 2, Tenth]."

In Phelps Dodge vs. NLRB, 313 U. S. 177, to which reference is made in the foregoing quotation from Award 10963, the Supreme Court said this at page 198:

> "Since only actual losses should be made good, it seems fair that deductions should be made not only for actual earnings by the worker but also for losses which he willfully incurred."

Although the Supreme Court has not considered the precise question in a case involving the NRAB, Federal courts of appeals have. In BRT vs. D&RGW, 338 F.2d 407 (C. A. 10, 1964), cert. den. 380 U. S. 972, the court ruled:

> "The collective bargaining agreement contains neither a provision for liquidated damages nor punitive provisions for technical violations. The Board has no specific power to employ sanctions and such power cannot be inferred as a corollary to the Railway Labor Act. See Priebe & Sons v. United States, 332 U. S. 407, 413. . ."

In interpreting the Union Shop provisions of RLA the Court of Appeals for the Sixth Circuit has ruled that a penalty for non-compliance with the union shop agreement which was not expressly provided for in the statute "should not be read into the Railway Labor Act by implication." BRT vs. Charles V. Smith, 251 F.2d 282, 287, certiorari denied 356 U. S. 937.

Second Division Award 3967 (Johnson) gives us this clear analysis of the law and the reasoning behind it.

> "The Supreme Court of the United States said in L. P. Steuart & Bro. vs. Bowles, 322 U. S. 398, that to construe a statute as imposing a penalty where none is expressed would be to amend the Act and create a penalty by judicial action; that it would further necessitate judicial legislation to prescribe the nature and size of the penalty to be imposed.
>
> "Similarly, for this Board to construe an agreement as imposing a penalty where none is expressed, would be to amend the contract, first, by authorizing a penalty, and second, by deciding how severe it shall

"be. Not only are the parties in better position than the Board to decide those matters; they are the only ones entitled to decide them. Consequently there have been many awards refusing to impose penalties not provided in the agreements. Among them are: Awards 1638, 2722 and 3672 of this Division; Awards 6758, 8251 and 15865 of the First Division; and 7212 and 8527 of the Third Division."

Award 13302 (McGovern) summarily disposes of the question in these words:

"The Claimant requests us to allow him eight hours pay a day as a penalty, . . . A review of this Collective Bargaining Agreement fails to make provisions for such a penalty, so we therefore revert to the 'make whole' concept of damages, well enunciated by many decisions of this Board too numerous to mention. . ."

Also see Awards 16668 (McGovern) and 16691 (Dugan).

The most significant of the cases cited as supporting imposition of penalties by the Board is BRSofA v. Southern, 380 F.2d 59, certiorari denied 389 U. S. 958. The proponents of penalty claims argue that this case stands for the proposition that the NRAB may grant damages in excess of actual loss; but the language of the decision itself clearly repels that conclusion. The case involved contracting out work in alleged violation of the collective bargaining agreement and with reference to the District Court's decision that only nominal damages should be allowed to the claimants the court said:

". . The Court reasoned that since Gunther permits judicial computation of the size of the monetary awards, it could exercise a discretion to allow Brotherhood nominal damages only where its members lost no time.

"This approach, however, completely ignores the loss of opportunities for earnings resulting from the contracting out of work allocated by agreement to Brotherhood members--a deprivation amounting to a

"tangible loss of work and pay for which the Board is not precluded from granting compensation. Nothing in the record establishes the unavailability of signalmen to perform the work contracted out by the railroad. . ." (Emphasis added.)

The decision is thus based expressly on a theory of "granting compensation" for a "tangible loss of work and pay."

The decision has been criticized on various grounds, but even if it constitutes a correct statement of the law, it does not support the proposition that the NRAB has jurisdiction to create penalties in excess of provable loss.

For additional authority on this matter see all of the following:

Award 10932 (Miller):

"As to Claimant Drown, it is uncontroverted of record that he was not qualified to perform the welding work done on June 5, 1958 and subsequent dates. Therefore, his claims herein must be denied."

Award 11107 (McGrath):

"The Claimant exercised seniority in the office of the Assistant Train Master at Canton after his position was abolished. He was neither an extra, unassigned or the regular employe within the meaning of Rule 4-A-1. The regular employe was H. W. Bretschneider, the incumbent of the regular clerical position E-35. This Board finds that this claim is not brought in the name of the proper Claimant." (Added emphasis.)

Award 11371 (Dorsey):

"Since the record makes clear that Claimant Marr was fully employed and therefore not available to do the work at the time it was performed by Flint; and, inasmuch as the record contains no evidence that such work could have been done, without undo hindrance, at a time when Claimant Marr would have been available, we will deny the claim."

Award 12250 (Seff):

> "The instant Agreement does not provide for compensatory damages for inconvenience. It is elementary that this Board does not have the authority to vary, change or add to the Agreement of the parties. In order to sustain the instant claim, the Board would have to add a provision for damages for inconvenience. This, we cannot do."

Award 13154 (McGovern):

> ". . . The Claimant found himself in exactly the same position he would have been in had the position been bulletined. He suffered no loss in earnings. We are therefore faced with a situation where we have no damages accruing to the Claimant and no contractual authority for the imposition of a penalty. In view of this, we have no alternative but to deny the claim for compensation requested in Claim number 2. (Award 12131) inter alia." (Emphasis added.)

Award 14918 (Kabaker):

> "There is no need to dwell at length on the question of the authority of the Board to award a penalty in the light of the numerous awards of this Board which have held the Board to be without jurisdiction to assess penalties."

Award 17103 (Ritter):

> "This Board further finds that the Organization has failed to sustain their burden of proof in their allegations concerning additional expenses. . . Therefore, a monetary award in this case would be in the nature of a penalty which this Board is without authority to assess; it does not involve lost work because of a violation of the Agreement. We can not speculate on what the actual necessary expenses might have been. See Awards 14981 by this referee, 15914 (McGovern) and 16691 (Dugan)." (Emphasis added.)

Also see Awards 10984 (McMahon), 11142 (Moore), 12131 (Sempliner), 12824 (McGovern), 12937 (Yagoda), 13096 (West), 13171 (Wolf), 13200 (Zack), 14937 (Wolf), 15477 (Hamilton), 16456 (Mesigh), 16693 (Dugan), 17337 (Brown), 17517 (Yagoda), 17764 (Gladden), 17852 (Ellis), 17994 (Quinn), 18305 (Dugan).

The doctrine of mitigation of damages is firmly established.

Award 11074 (Dorsey):

> "It is firmly established that one who seeks damages for a breach of an employment agreement is obligated to mitigate such damages by seeking and accepting comparable employment. See, for example, First Division Award 15765 (Carter). We will, therefore, order Carrier to pay to Claimant such wages as he would have earned as a waiter on Trains Nos. 17 and 18, absent the violation of the Agreement, in the period from November 16 to December 11, 1957, less such wages as he would have earned had he accepted the offers of employment set forth above."

Again, in Award 13096 (West) the rule was given its traditional application by allowing compensation for time lost subject to the limitation that:

> ". . . This compensation should, however, be reduced by the earnings of Claimants in other employment. It can be further reduced by amounts which could have been earned by such employes in other employment of a similar nature and position and in the same general location."

Also see Award 10963 (Dorsey) and Phelps Dodge vs. NLRB, 313 U. S. 177.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In the Matter of	:	In Proceedings for the Reorganization of a Railroad
PENN CENTRAL TRANSPORTATION COMPANY,	:	
Debtor	:	No. 70-347

ORDER NO. 609

AND NOW, this 15th day of MARCH, 1972, it is ORDERED that the PETITION OF THE TRUSTEES FOR APPROVAL OF AND AUTHORITY TO COMPLY WITH A LABOR AGREEMENT PROVIDING GROUP INSURANCE BENEFITS is hereby set down for hearing at 10:00 AM on the 27th day of MARCH, 1972, at the United States Court House, Philadelphia, Pennsylvania.

JOHN P. FULLAM
JOHN P. FULLAM
District Judge

BY: JOHN J. HARDING
CLERK OF COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In the Matter of	:	In Proceedings for the Reorganization of a Railroad
PENN CENTRAL TRANSPORTATION COMPANY,	:	
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JOHN P. FULLAM
District Judge

BY: JOHN J. HARDING
CLERK OF COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In the Matter of	:	In Proceedings for the Reorganization of a Railroad
PENN CENTRAL TRANSPORTATION COMPANY,	:	
Debtor	:	No. 70-347

MAR 16 1972

PETITION OF THE TRUSTEES FOR APPROVAL OF AND AUTHORITY TO COMPLY WITH A LABOR AGREEMENT PROVIDING GROUP INSURANCE BENEFITS

The Trustees represent:

1. On February 29, 1972, a national railroad labor contract expired to which the Debtor was a party. It provided for the financing of group insurance benefits for substantially all railroad employees in the United States represented by labor organizations, including such employees of the Debtor. It was the latest in a series of such contracts to which the Debtor and its predecessors were parties providing for such financing beginning March 1, 1955. The financing is provided by monthly payments for each active covered employee.

2. Pursuant to the provisions of these agreements a policy of insurance issued by The Travelers Insurance Company, designated as Group Policy Contract GA--23000, has provided hospital, medical, surgical, major medical, and life insurance protection for covered active employees and their dependents, and certain continuing life insurance protection for covered retiring employees. On-duty injuries are insured for which an additional payment is made.

3. The said contract and policy being due to expire on February 29, 1972, the parties, including the Debtor, served notices under the provisions of the Railway Labor Act proposing amendments to and an extension of the contract and policy.

4. Negotiations on behalf of the Debtor were conducted by the National Railway Labor Conference.

5. On February 24, 1972, an agreement (Agreement) was signed in settlement of the dispute. A copy will be exhibited to the Court at the hearing on this Petition.

6. The Agreement provides:

(a) Group Policy Contract GA--23000 is renewed for a period of two years from March 1, 1972.

(b) A relatively minor improvement in certain existing benefits is to be made.

(c) There will be an immediate increase in the basic payment for each covered active employee of $12.61 a month from $39.40 to $52.01. The payment for on-duty injuries is increased $1.09 a month from $1.63 to $2.72, 20 cents of which may be refunded if claims experience in the first contract year is favorable. In the second contract year the basic payment will remain the same but the payment for on-duty injuries may be increased an additional 47 cents a month if claims experience in the first contract year is unfavorable. These payments are subject to further limited increases should government control of health care costs be discontinued or substantially relaxed during the two year contract period.

(d) A Standing Committee is created to explore methods of minimizing the cost of providing benefits.

(e) Court approval is required with respect to railroads in the hands of trustees.

(f) No new proposals relating to health and welfare benefits or the financing thereof

may be made to be effective prior to March 1, 1974. If agreement is not reached prior to that date on a further extension of the insurance program, contributions will continue at the then current rate until changed under the provisions of the Railway Labor Act and agreements will be made to provide such insurance as can then be financed from such payments.

7. The estimated increase cost to Penn Central under the provisions of the Agreement during the first contract year would be between $12.7 million and $12.9 million and during the second contract year between $12.7 million and $13.4 million.

8. The Trustees are advised and therefore allege that pursuant to present rules and regulations under Phase II of the Economic Stabilization Program no approval or other action by the Pay Board is required before placing the Agreement into effect.

9. The Trustees are of the opinion and therefore recommend that since costs under the Agreement are subject to only minor variation over the anticipated life of the contract, that the Agreement should now be approved.

WHEREFORE, the Trustees pray that Orders be entered herein:

1. Fixing a time and place for hearing to be held on this Petition;

2. Approving the Agreement and authorizing the Trustees to comply with the terms thereof.

FOR THE TRUSTEES

By _____
One of the Trustees

Ralph V. Pickard
Attorney for Trustees
1138 Six Penn Center Plaza
Philadelphia, Pa. 19104

Dated: March 14, 1972

VERIFICATION

COMMONWEALTH OF PENNSYLVANIA:
: SS
COUNTY OF PHILADELPHIA :

Jervis Langdon, Jr. , being duly sworn, deposes and says that he is a Trustee of the property of Penn Central Transportation Company, Debtor, and is duly authorized by his fellow Trustees to make the above Petition on their and his behalf, and that the statements contained in said Petition are true and correct to the best of his knowledge, information and belief.

Jervis Langdon

SWORN to and SUBSCRIBED
before me this 14th day
of March, 1972.

Alfonse J. DiGregorio
NOTARY PUBLIC
Philadelphia County, Philadelphia
My commission Expires: August 7, 1972