

Referee Joseph A. Sickles

PARTIES Railroad Yardmasters of America
TO
DISPUTE: Southern Railway Company

STATEMENT OF CLAIM: Claim and request of Railroad Yardmasters of America that:

Spencer, N. C. Yardmaster W. B. VanPoole for pay for time lost beginning November 10, 1977, and restoration to service with all seniority and other rights unimpaired, following collision and derailment of Train No. 1 and Train No. 152 on October 8, 1977 at Spencer, N.C.

OPINION OF BOARD: Claimant was notified of an investigation concerning a derailment. Subsequent to the investigation, he was dismissed from service but was later reinstated.

Rule 7(F) of the Agreement between the parties states:

"Unless extended by mutual agreement,
decision will be rendered within ten
(10) days from date of final hearing."

The hearing was finally concluded on October 27, 1977. On November 10, 1977 Carrier determined that Claimant violated certain rules, and he was dismissed from service. In its initial appeal on the property, Claimant alleged a violation of the cited Rule, and the asserted violation was pursued during the appellate process. Ultimately Carrier defended its action by asserting that "...due to the fact that the transcript of this investigation was 298 pages long plus exhibits and the fact that there was 37 people involved in this investigation. It would have been impossible for all the facts to be gathered and a decision rendered any sooner... I do not agree that this is a fatal defect...."

In response, Claimant pointed out that Carrier "... made no effort to secure a mutual agreement..."

Carrier asserts (despite the fact that a decision will be rendered within ten (10) days) that the language is discretionary and not mandatory, and cites Third Division Award 16172 among others.

Claimant relies upon (among others) Third Division Award 19974 and 4th Division Award 1995 which concluded that a decision which is not rendered in a timely fashion is "...void and is without effect."

Surely it is always preferred to base an Award upon the particular merits of a dispute. But we are always mindful of the fact that we are not empowered to amend or alter agreements. Rather, we are constituted to interpret and enforce them. The various Carriers do not hesitate to urge that claims be dismissed when time limits are ignored or overlooked. At the same time, we should not hesitate in denouncing a Carrier's failure to comply with a mandatory time limit to which it agreed. Award 3603's determination to ignore contractual time limits is, in our view, a substitution of the Referee's predilection for the agreement of the parties.

We will sustain the claim.

FINDINGS:

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

The carrier and the employes involved in this dispute are respect carrier and employe 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.

The parties to said dispute waived right of appearance at hearing, but were granted privilege of appearing before the Division with Referee sitting as a member thereof, to present oral argument.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

ATTEST:

Executive Secretary
National Railroad Adjustment Board

By: 
Assistant Executive Secretary

Dated at Chicago, Illinois, this 10th day of October 1979