

The Fourth Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

(The American Railway and Airway Supervisors Association:
(A Division of BRAC

PARTIES TO DISPUTE: (

(Southern Pacific Transportation Company (Western Lines)

STATEMENT OF CLAIM: It is the Claim and request of the Petitioning Organization that:

1. Carrier violated the Agreement and, in particular, Rule 17, when it dismissed Mr. C. F. Bouwman, Supervisor, Sacramento Locomotive Works, effective October 5, 1985, following a Hearing held on September 17, 1985, in that said dismissal was unjust, unwarranted, and an abuse of Carrier's discretion.

2. As a result of this violative action, Carrier shall be required to reinstate Mr. Bouwman to his former position of Supervisor, pay him for all wages lost with seniority, vacation and health and welfare benefits unimpaired, and his record cleared of all reference to the charges.

FINDINGS:

The Fourth 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.

The Organization argues that the Carrier violated the provisions of Rule 17 when it failed to timely respond to an appeal on two occasions. Rule 17 requires that discipline appeals be answered within thirty days of date of receipt.

Claimant was notified of his dismissal by letter dated Thursday, October 3, 1985. The next day, Friday, October 4, 1985, his General Chairman filed an appeal. This appeal was answered by letter dated November 13, 1985. Four days later on Sunday, November 17, 1985, a second appeal was addressed

to the next highest appeal officer. This letter specifically referenced Carrier's untimely denial of the first appeal. The second level appeal was denied in a letter dated December 17, 1985, but bore a December 18, 1985 postmark.

It is arguable whether or not the second appeal was answered late. This is not the case with the first appeal. Clearly, it was not responded to within thirty days. In defense of its late denial, Carrier suggests the Organization, upon its receipt, should have gone back seeking clarification of the delay instead of immediately appealing the matter further. Purportedly, additional handling at Level One might establish that the answer was made within thirty days of the date of actual receipt. It also argues that, in any event, there is no showing that the rights of the Claimant were prejudiced in any manner or that he was somehow placed in a disadvantageous position as a result of the late answer.

Neither argument is persuasive. The Organization need not explore the cause for a time limit breach. If the Friday, October 4, 1985 letter was not placed in the mail until Monday and was further delayed in delivery so its receipt was within thirty days of the November 13, 1985 answer, it was the duty of the Carrier to raise and perfect these facts. Furthermore, the time limit provisions are not intended to come into play only upon a showing of prejudice or being placed in a disadvantageous position.

Rather, compliance with time limit requirements are mandatory for both parties. In Third Division Award 18335, we held:

"The record clearly disclosed that Carrier failed to comply with the mandatory requirements of Rule 8(b) of the Agreement in that the officer appealed to did not render a decision within five (5) days after the date of the appeal hearing, and, therefore, we will sustain the claim."

Also see Third Division Awards 19666 and 21966.

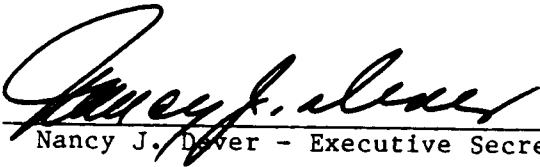
Accordingly, we hold that Carrier violated Rule 17 when it failed to timely respond to an appeal of the discipline imposed in its October 3, 1985 letter. This violation voids the discipline and requires that the claim of the Organization be sustained. Claimant, who had been returned to service as a Machinist within six months of his dismissal, shall be reinstated to his position under the Supervisors' Agreement and paid for net wage losses incurred as provided for in Rule 17(e).

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 18th day of February 1988.