

PUBLIC LAW BOARD NO. 5345

Award No. 1

BLE File No. 71-5495-D

Carrier File No. E&F-2PBF-9

Parties: Brotherhood of Locomotive Engineers
to and
Dispute Southern Pacific Transportation Mines
St. Louis Southwestern Railway Lines

Statement
of Claim: The employees respectfully request the personal record of
Engineer C. Butler be expunged as per Carrier's letter of
September 18, 1991 and that he be returned to service from
which withheld, with full seniority rights and with full pay
for time lost, including vacation credits, plus any and all
expenses resulting from the investigation and dismissal from
the first date of lost service up to the date he is allowed
to assume service.

Findings: The Board has jurisdiction by reason of the
Agreement establishing the Board therefor.

The Claimant Engineer, C. Butler, on August 16, 1991,
was operating the engine of Train 1LFASM-14, in such a
manner as to cause the train to pass a red absolute signal
at the west end of Fordyce by some 4 or 5 car lengths. The
Claimant was suspended from service pending a formal
investigation in connection therewith.

As a result of the investigation held, Carrier
concluded that he was culpable and he was dismissed from
service as discipline therefor.

The standard of review in cases of discipline matters
is similar to that of an appellate board. The case is
reviewed to first determine whether the Claimant was
accorded the due process to which entitled under his/her
discipline rule and (2) whether there was sufficient
evidence adduced to support the conclusions of Carrier as to
the Claimant's culpability of the charge or charges placed
against him and (3) whether the discipline imposed, in view
of the incident and the record of handling, was
unreasonable.

The Claimant was not accorded the due process to which
entitled. The dismissal was appealed to Superintendent
Tanner, as per Article 41 and 71, under date of October 23,
1991. The Superintendent under date of December 18, 1991
advised that conference thereon would be held on January 2,
1992. Article 41-8 Appeals:

"...must be filed...to the Superintendent within sixty (60) days of the date discipline is assessed. The Superintendent will render written decision on the appeal within sixty days of receipt. If conference is requested in the initial appeal such conference will be granted within sixty days and prior to decision being rendered." (emphasis added)

Superintendent Tanner conferred and denied the claim on January 2, 1992 which established the fact that such conference date was in excess of the time limits of sixty days. The Superintendent's procedural failure to hold a conference and deny the case within said 60 days time limit validated the claim as made. Payment should have been made at the local level because the merits of the case cannot be reached.

Time limits rules are negotiated by the parties. Such time limits is the parties creation and they expect to be bound thereby. As Chairman and Neutral Member Joseph Lazar stated in Award No. 1 of PLB 3715:

"When time limitations, for the performance of an act are embodied to the Agreement, with precision, as in Rule 73 of the agreement between the parties, the parties are contractually obligated to comply with them. The Board is governed by the Memorandum of Agreement of September 6, 1984 and is confined to the interpretation of the Agreement between the parties. The Board expressly does not "have authority to change existing agreements or establish new rules."

In the circumstances of this case, the claim must be conditionally sustained but that portion of the claim reading "plus any and all expenses resulting from the investigation and dismissal, etc." or similar phrases appearing in the Statement of Claim is not sustained unless that quoted portion results from a rule in the Agreement.

The Claimant's offense and his service record indicate a strong need for a one year restriction in yard service. During such period, the Claimant should receive additional Engineer re-training.

The Claimant will, of course, be required to take a return to service physical examination, including a urinalysis test.