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In the Matter of Arbitration	:	
Between	:	
Southern Railway Company	:	
And	:	FINDINGS AND AWARD
International Brotherhood of Boilermakers,	:	
Iron Ship Builders, Blacksmiths, Forgers	:	
and Helpers	:	
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QUESTION AT ISSUE:

Are D. L. Haver and G. L. Galbreath entitled to a
 "dismissal allowance" under the New York Dock
 protective conditions as the result of their
 furlough on September 6, 1985?

BACKGROUND: The two Claimants in the case before the Board occupied Boilermaker positions in the Carrier's Atlanta Diesel Shop. On September 5, 1985 they were furloughed. This is the action which triggered the claim now to be resolved.

Prior to their furlough, the Norfolk Southern Corporation had obtained approval on March 19, 1982 to take control of the Norfolk and Western and the Southern Railways. The approval order included the requirement that New York Dock Conditions apply.

In accordance with the normal procedure, the Parties executed an Implementing Agreement on January 25, 1982. This document provided the particulars of the coordination of certain work and the conditions set forth in New York Dock.

The two claims were submitted to the Carrier by letter dated September 12, 1988. Following an exchange of correspondence, it became clear that the main basis for the claims was the contention that certain repair work of Atlanta based locomotives, as well as modification of some locomotive toilet systems, had been done in the Carrier's Roanoke Shop rather than the Atlanta Shop. The Claimants contended that this deprived them of work and resulted in their furlough. Because the parties could not agree on a resolution of the claims, it was properly progressed to this Arbitration Committee.

FINDINGS: The Board has carefully reviewed and considered the submissions of the parties, the record developed on the property as well as the various holdings on which the parties have relied. The Carrier, as a threshold matter, contends that these claims were not filed in a timely manner. The Claimants waited about three years after the occurrence of the events upon which their claims are based before they were submitted to the Carrier. Certainly, the doctrine of Laches has been recognized in this industry as well as by other arbitral precedent to bar claims filed beyond a reasonable time period. The theory underlying the Laches doctrine is that the failure to litigate a claim presently by deferring action until some unspecific but distant time in the future result in bias or prejudice the party against whom the claim is ultimately filed. The purpose of Laches is to bar the submission of

stale claims. Clearly, in employee protective matters, it is critical that claims be filed without delay. In the cases at hand, and while we have fully considered the General Chairman's aggressive and skilled comments before us, the Claimants' failure to act in a timely manner precludes consideration of the issue at hand.

It is to the benefit of both parties to initiate and process claims in an expeditious manner. Often times there is a period of uncertainty with respect to the movement of work between shops following mergers; and, at times, this results in gradual, incremental changes. As a consequence, it may well be difficult to clearly identify the specific time at which the claimed adverse effect became apparent. In other words, there may be a gradual erosion of work which is not readily apparent or easily identified. However, such was not the case here. The Claimants were furloughed on September 6, 1985. As of this date, they state they were placed in a "worse position". One of the Claimants signed his claim on July 20, 1988. The other Claimant signed on August 15, 1988. They gave no reason for waiting almost three years from the time that they claimed to have been put in a "worse position" until the claims were filed. In the circumstances that we find here, such a delay was unreasonable. Therefore, the Board finds that the claims are barred.

AWARD

As specified in the Findings.

G. C. Edwards
G. C. Edwards
Carrier Member

E. Muessig
Eckehard Muessig
Neutral Member

Alan M. Scheer
Alan M. Scheer
Organization Member

Dated: February 13, 1990