

Award No. 80
BLE No. 5063
EL No. 5063

PUBLIC LAW BOARD NO. 250

PARTIES TO DISPUTE:

Brotherhood of Locomotive Engineers

Erie Lackawanna Railway Company

STATEMENT OF CLAIM:

"Request by Engineer J. P. Scifarth that a discipline entry of 15 days actual suspension be removed from his service record and that he be compensated for all time lost as a result of a hearing held in Youngstown, Ohio, on December 9, 1968."

FINDINGS:

The threshold issue is whether Carrier failed to comply with Article 60(b)'s requirement that "An employee, charged with an offense, will be notified in writing within seven (7) days from the date it is known the alleged offense occurred." The record establishes that the alleged offense was known by Carrier on November 28, 1968, and that claimant was first notified of the charges against him by letter dated December 3, 1968, but not received until December 6, 1968. It accordingly is clear that claimant was not given the seven-day notice prescribed by Article 60(b). This defect was objected to on the property during the hearing itself, and will not be deemed waived merely because it was not reasserted at every subsequent stage of the case.

The language of the rule is clear. It requires that claimant be notified within seven days and not simply that the notice be mailed or that charges be issued during that time. There is no evidence that claimant could not be reached earlier or that he evaded service of the notice or otherwise contributed to the delay. Upon the specific facts of this case, the claim will be sustained.

AWARD: Claim sustained.

Adopted at Cleveland, Ohio, on December 6, 1972.

ORDER: Carrier is hereby ordered to make the above award effective on or before January 5, 1973.

/s/ H. M. Weston

H. M. Weston, Neutral Member

/s/ W. H. Jaco

W. H. Jaco, Employees Member

/s/ C. H. Zimmerman

C. H. Zimmerman, Carrier Member

Cleveland, Ohio
December 6, 1972.