

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 6041**

**JOHN C. FLETCHER, CHAIRMAN & NEUTRAL MEMBER
GENE L. SHIRE, CARRIER MEMBER
DON HAHS, EMPLOYEE MEMBER**

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS
BNSF SANTA FE, GENERAL COMMITTEE**

and

**BURLINGTON NORTHERN AND SANTA FE
RAILWAY COMPANY**

**Award No. 28
Case No. 28
Engineer R. D. Barron**

*Date of Hearing - October 28, 1998
Date of Award - January 29, 1999*

Statement of Claim:

Claim of New Mexico Subdivision Engineer R. D. Barron for all time lost while being withheld from service for the BNSF Railway Company while serving said 90 day suspension, including pay for time lost while attending the formal investigation and that Engineer Barron's record be expunged of any mention of the incident of April 18, 1997.

FINDINGS:

Public Law Board No. 6041, upon the whole record and all of the evidence, finds and holds that the Employee(s) and the Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute(s) herein; and, that the parties to the dispute(s) were given due notice of the hearing thereon and did participate therein.

On April 18, 1997, the herein Claimant, Engineer R. D. Barron, was involved in an incident at Vaughn, New Mexico wherein the engine consist he was operating allegedly occupied the North Main Track without authority. An investigation was held on the incident on June 17, 1997. Claimant was notified on July 10, 1997 that he was assessed discipline of a 90 day suspension and placed on probation for 3 years. That discipline has been appealed to this Board on a variety of grounds, both procedural and substantive.

Among the procedural defects, the Organization contends that the Superintendent violated the Time Limit Agreement when Claimant's appeal of the discipline was not denied within thirty days following the date of receipt of the appeal. The Board has examined this record with care, and concludes that this contention is correct. The Agreement requires that:

1.(b) If the appeal is to be denied by the Superintendent, he must within thirty (30) days from the date of such appeal, notify the employee and his representative, in writing, the appeal is denied.

...

6. If there is a failure to comply with the time limit provision of this agreement by either party, the matter shall be considered closed, and settled accordingly, but this shall not be considered as a precedent or waiver of the contentions of either party for the handling of other similar discipline cases.

The evidence demonstrates that Claimant's appeal was not denied within thirty days of the date it was received in the Superintendent's office. Therefore, under the Agreement "the matter [was to be] considered closed" at that level, "and settled accordingly." "Settled accordingly" cannot fairly be read to mean that Carrier can continue to deny the matter, the bottom line of its arguments here, because the matter would not be closed and would remain unsettled.

The two phrases "considered closed" and "settled accordingly" means that when the Organization "blows" the time limits it no longer has a viable appeal and the discipline assessed will not be modified. When the Carrier "blows" the time limits the discipline must be expunged and the employee must be paid, as requested in the appeal. Any other reading of the Rule would produce nonsensical results and would go contrary to a long history of consistent application of time limit rules in this industry.

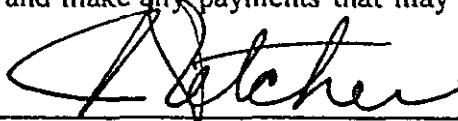
The Board will direct that the appeal to the Superintendent be sustained as presented because it was not timely denied.

A W A R D

Claim Sustained

O R D E R

Carrier is directed to comply with the terms of this Award within thirty days of the date indicated below, and make any payments that may be do Claimant within that time period.


John C. Fletcher, Chairman & Neutral Member
Gene L. Shire, Carrier Member
Don Hahs, Employee Member

Dated at Mt. Prospect, Illinois., January 29, 1999