PUBLIC LAW BOARD NO. 6552

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES	)	
	)	AWARD NO. 1
And	)	CASE NO. 1
	)	
SOO LINE RAILROAD COMPANY	)	

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The dismissal of Foreman James A. Quilling for alleged theft in connection with expense reports filed from 1992 through 1998 was without just and sufficient cause, based on unproven charges and in violation of the Agreement (System File D928-8.99/8-00393).

(2) As a consequence of the violation referred to in Part (1) above, Foreman James A. Quilling shall now be reinstated to service with seniority and all other rights unimpaired and compensated for all wage loss suffered."

FINDINGS:

Public Law Board No. 6552, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employes within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.

Claimant, a gang foreman on a crossing crew, was first hired by the Carrier in 1977. By letter dated August 5, 1999, he was removed from service pending formal investigation for alleged falsification of expense accounts and time sheets. A subsequent notice detailed the allegations more specifically, charging the Claimant with alleged falsification and abuse of motel lodging, camper receipts, associated meal expenses and other irregularities claimed on expense accounts submitted by the Claimant, and alleged falsification of time sheets for various months during the period 1991 through 1998.

An investigation was conducted on August 31, September 1 and 2, 1999. Because there was a voluminous record, Carrier twice requested extensions of time to render a decision. These requests were granted by the General Chairman. There is no dispute that the Carrier's decision was to be rendered on October 1, 1999.

By letter dated October 1, 1999, Carrier dismissed Claimant from service. However, the letter was not mailed until October 4, 1999, which was outside the agreed upon extension of time.

Rule 20 (b) states that the Carrier's decision "shall be rendered within fifteen (15) days from the date the hearing is completed."

The Organization contends that Carrier did not render its decision until three days after the agreed upon date. In the Organization's view, the failure to render a decision in a timely manner requires that the claim be sustained as presented. Carrier, on the other hand, argues that the decision was timely "rendered" in that it was dated October 1, 1999 as agreed to by the parties. Carrier maintains that there was no agreement that the decision had to be received or postmarked by any certain date and therefore there was no violation of the Agreement.

The question of when a decision has been "rendered" has been addressed before. In First Division Award 16366 (Daugherty), the Board held:

> **His case here rests solely on the contention that notice of carrier's decision did not conform to the time limit provisions of Article 13(a) of the parties' controlling agreement, which states that the decision must be 'rendered in writing within ten days or case will be considered closed.'**
>
> **The record shows that the investigation of the charges against Sinnott was held on February 19, 1949, and a letter apprising him of carrier's decision was written and mailed at the McNary post office by Manager Willis at about 5 p.m. on March 1, 1949, which was the tenth day after the day of the investigation. However, the letter was postmarked March 2, 1949 and was not received by Sinnott until the following day.**
>
> **Our decision here must necessarily rest on our interpretation of the above-quoted words of Article 13(a) as applied to the facts of the case. It appears that in writing this rule the parties intended to provide in general for fair hearings and for just discipline and prompt decisions in cases of admitted or proved violation of carrier rules. The facts of the instant case do not establish any substantial disregard of this general intent. Yet it does appear that there was at least a technical violation. In respect to the words used in Article 13(a), we think 'rendered' means 'sent.' We do not deem that 'rendered' means the making of the decision or even just the writing thereof to the employe involved. The written decision must be dispatched.**
>
> **On the other hand, we do not think that 'rendered' means 'delivered' or 'received' by the employe. It is clear that, just as a decision once written could be held indefinitely in the hands of the carrier and not dispatched, so a dispatched decision could be indefinitely delayed in actual receipt by or**

delivery to the employee; e.g., if he were away on vacation or for other reasons.

Our question thus boils down to whether the written decision was sent to Sinnott in conformance with Article 13(a)'s time limits. On this issue, we deem the date of postmark to be the only conclusive evidence. And on this evidence the carrier may properly be judged to have delayed at least one day beyond the specified time limit.

It is true that the delay is not shown to have been serious. It is also true that ten days is an arbitrary length of time. But, however arbitrary, it was fixed by the parties. And it is not within the authority or competence of this Board to substitute for it some other arbitrary number of days. We think a sustaining award is indicated.

In Public Law Board No. 1844, Award 79 (Eischen), the Board reached the same conclusion on similar facts. The Board held:

The record persuasively establishes that the Notice of Discipline was typed on Thursday, April 12, 1979, within the ten day limit. But the decision was not mailed until Monday, April 16, 1979, apparently because of mail backlog in Carrier's office due to the Easter holidays. On those facts, the decision was 'rendered' for purposes of the ten day requirements of Rule 19(a) when it was placed in the mail by Carrier.... The postage meter date on the envelope in which Carrier mailed the decision is April 16, 1979. Clearly, this is more than ten days from the completion of the hearing on April 4, 1979. We have on other occasions held that the time limits of Rule 19 are meaningful provisions which must be strictly enforced.... We shall sustain the claim due to Carrier's violation of Rule 19(a), without reaching the merits.

We see no reason to depart from the persuasive logic set forth above. **The Carrier's decision in this case was rendered on October 4, 1999, three days beyond the parties' agreed upon date. It was untimely. There is ample precedent favoring the position of the Organization that satisfaction of fixed, agreed upon time limitations is mandatory for both parties. Third Division Awards 21996 (Sickles); 23553 (Dennis); 24623(Silagi); Public Law Board No. 1844, Award No. 62 (Eischen). The Board has no authority to revise agreements on behalf of one party when time limits have not been met. Carrier had the option of requesting another extension of time in this case and obtaining the concurrence of the Organization. By failing to do so, Carrier proceeded at its peril.**

The Board understands that considerable time and effort were expended on the merits of this case. However, we must sustain the claim based on the procedural deficiency in the Carrier's handling without reaching the merits.

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AWARD

Claim sustained.

ANN S. KENIS, Neutral Member

Carrier Member
M.R. Kluska

Organization Member
D.D. Bartholomay

Dated November 1, 2002.