

AWARD NO. 62

CASE NO. 75

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The five (5) day suspension of Assistant Foreman-Truck Driver K.A. Olson was improper and in violation of the Agreement because:
  - (a) Time limits were not observed under the provisions of Rule 19 (a).
  - (b) Claimant in addition to the five (5) day suspension was notified to serve a ten (10) day deferred suspension recorded in Notice 23A. (System File D-11-3-276)
- (2) The record of Assistant Foreman K.A. Olson be cleared and Claimant be compensated for all wages lost."

OPINION OF BOARD:

Claimant was an Assistant Truck Driver-Foreman who was assessed discipline of five days actual suspension after being found guilty of reporting one hour late for work on April 2, 1978. The hearing and investigation was held on April 27, 1978 upon proper notice. Under date of May 8, 1978 a notice of discipline was sent by Carrier, assessing the five day actual suspension and activating a ten day record suspension.

The case comes to us on a procedural/timeliness issue stemming from the requirement of Rule 19 Discipline which reads as follows: "Decision will be rendered within ten (10) calendar days after completion of hearing". There



is no getting around the fact that in this case the decision was rendered one day late, i.e., on the eleventh calendar day after the hearing. Carrier urges that this error is de minimis and should not invalidate the disciplinary action, but rather, at most, should result in a reduction of the penalty by the one day dereliction. In support of this approach Carrier cites Award 3-21289. Analysis of that decision persuades us that the approach taken therein was limited to the peculiar facts of that case and is without precedent value to us. The weight of authority favors the position of the Organization that time limits are to be construed strictly and that they are two-edged swords which cut equally whether to work a forfeiture against an employee or to invalidate action taken by the employee. See Awards 1-16366; 3-743; 3-2222; 3-21675; 3-21873; 3-21996, et al. Because of the patent violation of Rule 19 we must sustain the claim, but in so doing we neither express nor imply any finding regarding the merits or lack thereof in the substantive claim.

FINDINGS:

Public Law Board No. 1844, upon the whole record and all of the evidence, finds and holds as follows:


1. that the Carrier and Employee involved in this dispute are, respectively, Carrier and Employee within the meaning of the Railway Labor Act;
  2. that the Board has jurisdiction over the dispute involved herein;
- and
3. that Rule 19 was violated.

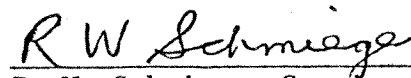


AWARD

Claim sustained.

  
Dana E. Eischen, Chairman

  
H. G. Harper, Employee Member

  
R. W. Schmiede, Carrier Member

Dated: Dec. 5, 1979