

PUBLIC LAW BOARD NO. 1844

AWARD NO. 79

CASE NO. 94

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees
and
Chicago & North Western Transportation Co.

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- (1) a. The ten (10) days deferred suspension assessed Trackman J.R. Tobin, April 12, 1979, was without just and sufficient cause. (System Files 90-076, and D-11-17-274)
- b. The Carrier failed to render a decision within ten (10) calendar days after completion of the hearing and therefore defaulted under the provisions of Rule 19(a).
- (2) The ten (10) days deferred suspension assessed Trackman J.R. Tobin must be stricken from Claimant's personal records.

OPINION OF BOARD:

Upon due notice to Claimant, Carrier conducted an investigation on April 4, 1979 into charges reading as follows:

Your responsibility in connection with your failure to work overtime in an emergency on March 24, 1979, for which you are being charged with violation of Rule No. 7 of the General Regulation and Safety Rules of the Chicago and North Western Transportation Company. Effective June 1, 1979.

That investigation was concluded on April 4, 1979 and twelve (12) days later, on April 16, 1979, Carrier mailed to the Organization's General Chairman a copy of the transcript of investigation and to Claimant and the General Chairman copies of a Notice of Discipline dated April 12, 1979 finding Claimant - guilty as charged and assessing a ten days deferred suspension.

Under date of May 8, 1979 the General Chairman filed the instant claim asserting a default by Carrier under Rule 19(a) for untimely rendering the decision and arguendo contending that Claimant was not guilty on the merits. Our review persuades us of the soundness of the Organization's procedural argument, and we express no opinion on the merits of this case.

Rule 19(a), which governs in this case, reads in pertinent part as follows:

Rule 19 - Discipline

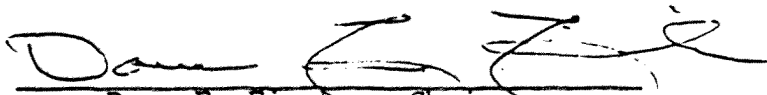
(a) Any employee who has been in service in excess of sixty (60) calendar days will not be disciplined nor dismissed without a fair and impartial hearing. He may, however, be held out of service pending such hearing. At the hearing, the employee may be assisted by an employee of his choice or a duly accredited representative or representatives of the Brotherhood. The hearing will be held within ten (10) calendar days of the alleged offense or within ten (10) calendar days of the date information concerning the alleged offense has reached the Assistant Division/Manager Engineering. Decision will be rendered within ten (10) calendar days after completion of hearing. Prior to the hearing the employee will be notified in writing of the precise charge against him, with copy to the General Chairman, after which he will be allowed reasonable time for the purpose of having witnesses and representative of his choice present at the hearing. Two working days will, under ordinary circumstances, be considered reasonable time. The investigation will be postponed for good and sufficient reasons on request of either party.

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. See Awards 3-12001 and 3-13219. 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

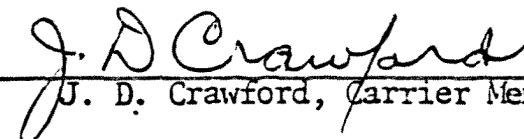
on April 4, 1979. We have on other occasions held that the time limits of Rule 19 are meaningful provisions which must be strictly enforced. See PLB 1844, Awards 19, 28, 58, and 62. We shall sustain the claim due to Carrier's violation of Rule 19(a), without reaching the merits.

AWARD

Claim sustained as indicated in Opinion.


Dana E. Eischen, Chairman


H. G. Harper, Employee Member


J. D. Crawford, Carrier Member

Date: April 2, 1981