

**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. 32
Case No. 32
Engineer C. D. Doss**

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

Statement of Claim:

Claim of Panhandle Subdivision Engineer C. D. Doss for all time lost while being withheld from service for the BNSF Railway Company while serving said dismissal and including pay for time lost attending the formal investigation and that Engineer Doss' record be expunged of any mention of the incident of March 22, 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 March 22, 1997, the herein Claimant, Engineer C. D. Doss, was operating a train between Wellington, Kansas and Amarillo, Texas when it passed a red absolute signal at Waynoka, Oklahoma. Claimant was cited to attend an investigation, that commenced on July 24, 1997 and concluded on July 31, 1997. On August 26, 1997, Claimant was advised that he was dismissed from service. While this matter was pending on appeal Carrier offered to reinstate Claimant on a leniency basis. This was accepted on August 26, 1998 with the understanding that Claimant would be allowed to continue to pursue his claim for payment for time lost.

Among the issues appealed was a contention that Carrier failed to respond to the appeal to the Division Superintendent within sixty days as called for by the Agreement. The Organization contends that this defect requires that the claim be allowed as presented. The Carrier contends that it does not. The rule involved states:

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

When a "matter shall be considered closed, and settled accordingly" just that result should obtain. "Settled accordingly" cannot fairly be read to mean that the Carrier can continue to deny the claim. If it were to be read that way then the agreement of the parties is nothing but meaningless words. The claim would not be considered closed.

This Board noted in our Award No. 28:

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 Agreement would result in nonsensical results and would go contrary to a long history of consistent application of time limit rules in this industry.

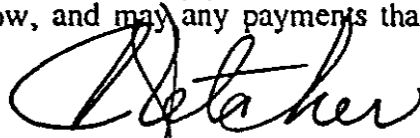
Accordingly, this Board will direct that the appeal to the Superintendent be sustained as presented.

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 may any payments that may be do Claimant within that time period.



John G. Fletcher, Chairman & Neutral Member



Gene L. Shire, Carrier Member



Don Hahs, Employee Member

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