

FROM : HEYWOOD AND CARI

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Jun. 14 2002 11:35AM P2

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June 14, 2002

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Room 715
Washington, D.C. 20423

VIA FACSIMILE
AND U.S. MAIL

RE: Finance Docket No. 32549 *Sub 24*
The Burlington Northern and Santa Fe Railway Company



ENTERED
Office of the Secretary
JUN 14 2002
Part of
Public Record

Dear Mr. Williams:

This refers to my letter of June 3, 2002 transmitting for filing in the above referenced proceeding an original and ten (10) copies of Claimant's Reply to Carrier's Petition for Review of Arbitration Award in the matter of arbitration between Margaret Ellingson and Diane Suchy, claimants and the Burlington Northern and Santa Fe Railway Company, Carrier. In reviewing claimant's reply, on pages 6 and 7 of the text there was an error in the language that was included in our original filing. The sentences at the bottom of page 6 carrying over to the top of page 7 should have been omitted and, therefore, I am enclosing herewith the corrected pages for the brief removing that language therefrom. I would appreciate if you would substitute the pages 6 and 7 that was originally transmitted to you in my reply. In that regard, in the mail copy, I am including an original and ten (10) copies for your record and transmitting one copy via facsimile for your immediate attention.

I apologize for any inconvenience the foregoing may cause and I would appreciate your correcting the same at your earliest convenience. If you should have any questions concerning this correction, please do not hesitate to call me.

FROM : HEYWOOD AND CARI

FAX NO. : 715 386 5531

Jun. 14 2002 11:35AM P3

Very truly yours,
HEYWOOD & CARI, S.C.



Walter Hodynsky

WH/dlc

cc: Lisa M. Harrison, Esq. (w/enc.)
Charles W. Shewmake, Esq. (w/enc.)
Diane Suchy (w/enc.)

with respect to the latter held that laches did not apply in that case. As such, the Carrier *had full* opportunity to argue and present both issues to the Arbitration Board which considered the same and rejected them. It would be expected that once the Arbitrator had issued her award, having addressed those issues, it would be final, binding and conclusive as set forth in Article 1, §11(c) of the New York Employee Protective Conditions. The Carrier now, however, would now wish to have "a second bite at the apple", not having prevailed the first time. This Board, however, should not permit the same and recognize the finality of the Arbitration Award issued under the New York Dock Employee Protective Conditions involving claimant Suchy.

The Carrier, however, maintains that under 49 C.F.R. §1115.8, "the Board will review arbitrations awards when faced with recurring or otherwise significant issues of general importance regarding the interpretation of our labor practice conditions." It cites in support thereof Chicago & North Western Transp. Co. - Abandonment - Near Dubuque and Olewein, IA, 3 I.C.C.2d 729, 736 (1987) ("Lace Curtain"). However, it is significant that the Carrier has not otherwise demonstrated or proven that the time limits which it has issued in this case is a "recurring or otherwise significant issue of general importance regarding the interpretation of our labor practice conditions." The burden proof in doing so, however, clearly rests on the Carrier, which has failed to meet that burden in this case. Indeed, it would appear that the time limits issue was an isolated one raised for the first time regarding claims Suchy as well as Ellingson previously heard by Arbitrator Ver Ploeg.

This only all the more indicates that in the original arbitration where the Carrier raised the argument, it was a fall back position which was not aggressively advanced on the property as well before the Arbitrator. Now, however, that the Carrier has lost on the merits, it has pushed the issue to the forefront and attempts to "boot strap" itself to a review before the Service Transportation Board. Obviously, the Board should recognize this play for what it really is and reject Carrier's Petition for Review outright.

Thus, from the foregoing, it is clearly evident that the Carrier errors in its statement on page 6 of the brief that "The Suchy Award fails to address the timeliness issue either in terms of the statute of limitations or under the doctrine of laches." Equally unconvincing is Carrier's argument that the Suchy Award "raises important issues concerning the implementation of an agreement imposing labor protective conditions." Apparently those "important issues" involve the issue of time limits when the "agreement fails to specify a time period for filing claims."

However, this is not wholly unexpected for three significant reasons:

1. If no time limits are specified in an implementing agreement, it is to be presumed there are none.
2. There are no time limits under the New York Dock Employee Protective Conditions.
3. If the parties intended that there should be any time limit provisions, they would either have been included in the implementing agreement or clearly set forth in the actual New York Dock Employee Protective Conditions.

Thus, based on the foregoing reasons, claimant respectfully submits that the Carrier's petition to review the Suchy Award is neither appropriate under the C.F.R. 1115.8 or the Lacey

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