Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 6854
SECOND DIVISION Docket No. 6734
2-T&P-EW-'75

The Second Division consisted of the regular members and in addition Referee David P. Twomey when award was rendered.

Parties to Dispute: ( System Federation No. 121, Railway Employes' Department, A. F. of L. - C. I. O. (Electrical Workers)
( The Texas and Pacific Railway Company

Dispute: Claim of Employes:

1. That, commencing on or about December 16, 1972, in violation of the Electricians' Special Rules, Rules 21, 22, 101 and the Scope Rule, the Texas and Pacific Railway Company assigned and continues to assign other than regularly employed crane operators to operate overhead electric cranes of less than 40 tons capacity in their Lancaster Shops, Fort Worth, Texas.

2. That, accordingly, the Texas and Pacific Railway Company be ordered to compensate Crane Operators C. W. Ashmore and G. E. Nipper, each eight (8) hours pay at the applicable pro-rata rate, commencing with May 15, 1972, and for each subsequent day thereafter, on a continuing basis, until the violation is properly adjusted.

3. In addition to the money amounts claimed herein, the Carrier be further ordered to pay Claimants an additional amount of 6% interest, per annum, compounded annually on the anniversary date of the claim.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved.

Parties to said dispute waived right of appearance at hearing thereon.

In mid-December of 1972, the Carrier completed conversion of three (3) 15 ton overhead cranes to pendulum type control cranes and abolished the positions of two (2) Crane Operator jobs held by Mr. C. W. Ashmore

and Mr. G. E. Nipper. The Carrier continued to pay these employes at the same rate of pay as they received as Crane Operators, but they are now classed as Electrician Helpers. Crane Operators are no longer used to operate the cranes in question, and the cranes are operated by the employe who needs the use of the crane in the performance of his duties. The organization filed a claim concerning the abolishment of the two Crane Operator jobs on May 15, 1973.

The Carrier contends that the claim is barred by the time limit rule of Rule 23(a) since it was not filed within sixty days of the date of the occurrence on which based. The Organization answers that their claim is a continuing claim, allowed under Rule 23(d) of the Agreement.

A great number of awards of this Board consistently hold that the distinction between a continuing claim and a non-continuing claim is whether the alleged violation in dispute is repeated on more than one occasion or is a separate and definitive action which occurs on a certain date, such as the abolishment of a position and transfer of work (See Third Division Awards 19341, 14450, 12045 and 10532 and many others). The record in this claim establishes without contradiction that the occurrence on which the claim is based is the abolishment of the crane operators positions in December of 1972. The record also absolutely establishes that no claim was presented to the Carrier until May 15, 1973. Under the Agreement of the parties Rule 23(a) we must dismiss the claim.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 2nd day of May, 1975.