Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6987
Docket No. 6751-T
2-PCT-MA-'76

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

Parties to Dispute: (International Association of Machinists and Aerospace Workers
(Penn Central Transportation Company

Dispute: Claim of Employes:

1. That the Carrier violated the controlling agreement by abolishing Machinist Robert Hamilton's machinist welder position and subsequently reassigning the welding work he had been performing, to the Boilermaker Craft.

2. That the Carrier be required to restore the work to the Machinist Craft and pay Machinist Hemilton three (3) hours' pay at his regular rate for March 9 through May 8, 1972, and every day thereafter until settlement of this case, on the basis of it being a continuing 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 herein.

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

First we must consider the Carrier's procedural contention that the claim must be dismissed because it was not presented within the 60-day time limit specified in Rule 4-0-1(1)(A) of the Agreement. The Organization counters that the claim was filed as a "continuing claim" in accordance with Rule 4-0-1(1)(C) of the Agreement.

Item 1 of the Employees claim states:

> "That the Carrier violated the controlling agreement by abolishing Machinist Robert Hamilton's machinist-welder position and subsequently, reassigning the welding work he had been performing, to the Boilermaker Craft."

The Employees, on page 3, paragraph 3, of the Joint Submission of the Parties (Employes' Exhibit 10), state as follows:

> "As shown in Employes' Exhibit 'B', the Company, effective October 22, 1971, abolished Claimant's Machinist Welder job. More important, however, is the fact that since October 22, 1971, the Company has assigned all welding work, including machinist welding, which is covered in Article X of the Scope of the Agreement, to Erwin J. Biel, mentioned previously, who is now a Boilermaker."

It is most clear that the Employees believed that the abolishment of the Claimant's position and the subsequent alleged assignment of welding work to the Boilermaker craft all occurred at once, or October 22, 1971.

This Board has long held that a claim is not a continuous one where it is based on a specific act which occurred on a specific date. While a continuing liability may result, it is settled beyond question that this does not create a continuing claim. (See Third Division Awards 11167, 12984, 15691, 16125, 18667, 19972, 20631.) In this case the date of occurrence was October 22, 1971. The claim was not presented until May 8, 1972. Such a filing was well beyond the time limits.

On pages 4 and 5 of the Employes' Submission, the Organization contends that the Claimant was continuously promised by the Carrier's local supervisor that his welding position would be reinstated, thus putting forth a rationale for the Claimant for not filing his claim until May 8, 1972. No probative evidence was presented to this Board to support this contention. Mere assertions and allegations certainly cannot be considered as proof.

Since the claim was not presented within the time limit, the claim must be dismissed.

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 23rd day of January, 1976.

LABOR MEMBERS' DISSENT TO AWARD NO. 6987

DOCKET NO. 6751

Award No. 6987 is not merely palpably erroneous but is so illogical as to depart from reason in the absurd interpretation of the Claims for compensation Rule 4-0-1.

The neutral stated in pertinent part:

> "first we must consider the Carrier's procedural contention that the claim must be dismissed because it was not presented within the 60-day time limit specified in Rule 4-0-1 (1) (A) of the Agreement. The Organization counters that the claim was filed as a'continuing claim' in accordance with Rule 4-0-1 (1) (C) of the Agreement."

Item 1 of the Employees claim states:

> "That the Carrier violated the controlling agreement by abolishing Machinist Robert Hamilton's machinist-welder position and subsequently, reassigning the welding work he had been performing, to the Boilermaker Craft."

For inexplicable reasons of his own he then proceeds to take parts of Item 1 of the Claim out of context by holding that it was the Petitioner's position that the abolishing of the Claimant's position and the subsequent alledged assignment of welding work to another craft all occurred at once on October 22,1971. Nothing could be further from fact since it was plainly stated in the record of handling, also repeatedly pointed out to this neutral that the abolishment itself was proper in accordance with merger Agreement Rules.

Such a matter of record is portrayed by the Carriers own abolishment notice of October 15, 1971, wherein is stated that this Machinist Welder position was abolished due to a decline in business and thereby permitted by Section 1-B of the Merger Protective Agreement. So the abolishment was correct but in the absence of set time limits for re-establishment of such abolished positions it becomes impossible to fix a hard and fast date for the "clock to start running" on time limit contentions.

On this same issue the neutral went on to state:

> "On pages 4 and 5 of the Employes' Submission, the Organization contends that the Claimant was continuously promised by the Carrier's local supervisor that his welding position would be reinstated, thus putting forth a rationale for the Claimant for not filing his claim until May 8, 1972. No probative evidence was presented to this Board to support this contention. Mere assertions and allegations certainly cannot be considered as proof.

This contention was before the Carrier throughout the entire handling on the property, as well as in the Employes' Submission, and never refuted by the Carrier. It is therefore astonishing, as well as improper, for the neutral to now try to "hang an allegation tag" on it. He is well aware that such an un-refuted statement is regarded as fact before this or any Board.

In fact, the question was posed to this neutral to rule on a time for reestablishment of such a decline in business abolishment and this is how that issue and question was ducked. In any event the Petitioners case was not based on the one and same time violation as asserted in this dismissal Award. This neutral

was furnished with a copy of his own Third Division Award No. 20614, wherein he held that there was no set time for re-establishment of employe positions after a temporary force reduction caused by strike. That dispute was very similar to this instant case in this one regard. However, this neutral chose for inexplicable reasons not to follow even his own precedents.

When a neutral accepts an assignment of deadlocked cases it certainly must be with the intent to adjudicate them. The Railway Labor Act holds that such disputes are considered minor and then directs them to this Board for adjudication. For any neutral to dodge this legally imposed responsibility through a fishing expedition for any and all Carrier specious arguments or technicalities, is certainly violating both the spirit and intent of this act.

Previous holdings of this Division that were very much in point on this issue were such as Referee Anrod in Awards 3974 and 4130 in pertinent part:

> "It is a well-established rule of law generally observed in application and interpretation of a collective bargaining agreement that such an agreement, as a safeguard of industrial and social peace, should be given a fair and liberal interpretation consonant with its spirit and purpose - disregarding, as far as feasible, strict technicalities or undue legalism which would tend to deprive the agreement of its vitality and effectiveness. See: Yazoo & M.V.R. Co. v. Webb, 65 F. 2d. 902, 903 (Ca-5, 1933); Arbitration Award in re Cameron Iron Works, Inc., 25 LA 295, 299 (1955). Moreover, in interpreting and applying the grievance procedure incorporated in a labor agreement, flex-

ibility is of the essance in order equitably to meet a wide variety of situations in the light of the realities of industrial file. See: United Steelworkers of America v. Enterprise Wheel & Car Corp., 363 U.S. 593, 597; 80 S. Ct. 1358, 1361 (1960).

Award No. 4130 then followed the same principles.

This Referees' findings that this claim was not a continuous one, along with his cited precedents, are the result of twisted logic in complete disregard for the facts of record. This dismissal Award is based upon reasoning so absurd as to be a nullity and to which this vigorous dissent is directed.

G. R. DeHague
Labor Member