

**NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION**

Award No. 13331

Docket No. 13171

98-2-96-2-72

The Second Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

(Kenneth A. Hipwell

**PARTIES TO DISPUTE:** (

(Southern Pacific Transportation Company (Western Lines)

**STATEMENT OF CLAIM:**

- “1. That the Southern Pacific Transportation Company (Western Lines) violated the controlling Agreement, Rules 19(a), when Carrier allowed vacancy to exist from December 3, 1994 to July 19, 1995, thereby not allowing furlough carman, K. A. Hipwell to bid on the vacancy had it been bulletin after 30 days.
2. That the Carrier violated Rule 38(b) of the controlling Agreement when it failed to respond to the Organizations letters of July 6, 1995 within the sixty (60) requirement, and therefore, that the claim be allowed as presented per Rule 38(b).”

**FINDINGS:**

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 were given due notice of hearing thereon.

This claim was submitted by letter dated July 6, 1995. The Claimant contends that the Carrier violated the “controlling agreement at the Ogden Facilities, at Ogden,

Utah when on and after December 3, 1994, the Carrier allowed job position to be vacant and did not bulletin job position on a temporary basis." The Claimant identified the "job position" as No. 3735.

Pursuant to Rule 38 of the parties' Agreement, claims must be filed within 60 days of the occurrence in dispute. If a violation did occur, it was on December 3, 1994, the date when the Claimant asserts that a bulletin should have been posted for position No. 3735. Accordingly, the Claimant had 60 days from December 3, 1994 to file his claim. It was not filed until July 6, 1995. The claim must, therefore, be dismissed because it was not filed timely.

The Claimant has also argued that his claim is continuing in nature and, therefore, it should not be denied because he did not file it within 60 days after December 3, 1994.

There are many Awards in this industry that have held that a claim based on an alleged failure of the Carrier to take an action, such as establishing or abolishing a position, does not constitute a continuous claim, even though such events may lead to continuing liability. See, among others, Public Law Board No. 3657, Award 39 and Third Division Awards 29894, 30077 and 29870.

**AWARD**

Claim denied.

**ORDER**

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**By Order of Second Division**

Dated at Chicago, Illinois, this 8th day of October 1998.