Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 13641
Docket No. 13506
01-2-99-2-108

The Second Division consisted of the regular members and in addition Referee Martin H. Malin when award was rendered.

(International Association of Machinists
(and Aerospace Workers
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

"(1) That the Union Pacific Railroad Company (hereinafter referred to as the Carrier or Company) violated Rules 21, 25 and 31of the current Controlling Agreement dated June 1, 1960, as subsequently amended, between the International Association of Machinists and the Missouri Pacific Railroad Company, when it employed a new machinist at its Shreveport, Louisiana Locomotive Servicing Facility while maintaining a Senior Machinist, C. W. Teague (hereinafter referred to as claimant) in a furlough status.

(2) That the Union Pacific Railroad Company compensate Claimant $19,958.40 which represents 140 days pay he lost as a result of the Carrier refusing/failing to return him to service while working a junior machinist. The above amount includes the lead workman rate of pay which was paid to the junior machinist for the entire period from December 6, 1998 through June 21, 1999, which is also the time frame which Claimant was deprived of employment.

(3) That Claimant be given credit for all benefits lost as a result of being deprived of his rightful return to service."

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.

On December 6, 1998, the Carrier employed a new Machinist at its Shreveport, Louisiana, facility. On February 16, 1999, the Organization filed a claim alleging that the Carrier violated the Agreement by hiring the new Machinist at a time that the Claimant was in furlough status. The Carrier denied the claim on May 7, 1999. Although the parties disagree over the merits of the claim, the Board finds that we cannot reach the merits because of the procedural issues presented.

Rule 31(a) provides:

> "All claims or grievances must be presented in writing by or on behalf of the employe involved, to the officer of the Carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based. Should any such claim or grievance be disallowed, the Carrier shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employe or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances."

The Organization contends that the Carrier failed to respond to the claim within 60 days of its filing and, accordingly, the claim must be allowed as presented. The Carrier maintains that the claim was void ab initio because the Organization failed to present it within 60 days of December 6, 1998, the date of the occurrence on which the claim is based. The Organization argues, however, that the claim is a continuing one and, therefore, is properly before the Board under Rule 31(d).

Rule 31(d) provides:

"A claim may be filed at any time for an alleged continuing violation of any agreement and all rights of the claimant or claimants involved thereby shall, under this rule, be fully protected by the filing of one claim or grievance based thereon as long as such alleged violation, if found to be such, continues. However, no monetary claim shall be allowed retroactively for more than 60 days prior to the filing thereof. . . ."

Thus, the critical issue presented is whether the claim is a continuing one. We have examined the Awards cited by the parties. The line between continuing and non-continuing violations can be a difficult one to draw at times. However, the key to drawing that line, in the first instance, is properly defining the alleged violation. If the alleged violation is a discrete act, the fact that the act continues to have consequences for a lengthy period of time does not make it a continuing violation. On the other hand, if the alleged violation is repeated multiple times over a lengthy period, a continuing violation exists.

In the instant case, the alleged hiring of a new Machinist, rather than recalling the Claimant from furlough on December 6, 1998, was a separate and definitive action which occurred on a date certain. It was not an action repeated on more than one occasion. Accordingly, we conclude that the claim is not a continuing one and, therefore, it was not filed in a timely manner (i.e., within 60 days of December 6, 1998). In accordance with established precedent, we further conclude that the claim was void ab initio and, consequently, the Carrier's failure to respond within 60 days of the claim's filing is irrelevant. See, e.g., Second Division Award 13531.

AWARD

Claim dismissed.

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 6th day of August, 2001.