

**NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION**

**Award No. 14140  
Docket No. 14022  
16-2-NRAB-00002-140059**

The Second Division consisted of the regular members and in addition Referee Joseph M. Fagnani when award was rendered.

**(Brotherhood Railway Carmen-Division of TCU/IAMAW  
PARTIES TO DISPUTE: (  
(BNSF Railway Company**

**STATEMENT OF CLAIM:**

- “1. That the Burlington Northern Santa Fe violated the terms of the February 1, 2006 Agreement, specifically Rules 13, 19 and Side Letter 5A dated April 15, 1996, when on January 12, 2012, they improperly bulletined a Carman relief road truck position #9193 without the required \$.25 per hour differential for road truck assignments. This position was awarded to Carman Micah Gibson.
  
2. That accordingly, the Carrier be ordered to compensate the Claimant \$.25 per hour for all hours worked commencing with March 2, 2012 and continuing until this issue is resolved.”

**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 January 15, 2012, the Carrier bulletined Carman Relief Position No. 9193 at the Havre, Montana Repair Facility. The duties of the position included performing Carman work at the facility and in the train yard and also stated that the position would relieve the regular road truck position when the regular driver was absent. The bulletin also required that the successful applicant have a Commercial Driver's License (CDL). The Claimant was awarded and began working Position No. 9193 on January 23, 2012. On May 1, 2012, the Organization filed a claim requesting that the position be abolished and re-bulletined with a 25 cent differential and requesting that the Claimant be paid a 25 cent differential beginning March 2, 2012, and continuing until the claim is resolved.**

**The Carrier raised a threshold issue asserting that the Board lacks jurisdiction to rule on the merits of the claim contending that the initial claim was filed by the Organization beyond the time limits set forth in Rule 34 of the Agreement, which reads, in pertinent part, as follows:**

**“All claims and grievances must be presented in writing by or behalf of the employee involved, to the officer of the Carrier authorized to receive same, within sixty (60) days from the date of the occurrence on which the claim or grievance is based. . .”**

**Specifically, the Carrier posits that the occurrence that gave rise to the instant claim was when the bulletin for Position No. 9193 was posted on January 15, 2012, and that the claim filed on May 1, 2012, was forty-five days beyond the mandated time limits in Rule 34 and also noted that the Claimant had been working on this position for over three months when the claim was first presented to the authorized officer of the Carrier. In addition, the Carrier notes that during the handling of this case on the property, the Organization never rebutted the Carrier's position relative to the time limits. The Carrier cited Awards of this Board upholding the principle that a claim that is not timely filed is considered void ab initio and cannot be considered on its merits.**

While the Organization did not specifically rebut the Carrier's position relative to the initial claim, the claim as presented on the property and that is now before the Board, requests compensation beginning March 2, 2012 and continuing, alluding to a possible position that the claim was timely filed as a continuing claim retroactive 60 days. Indeed, in its oral argument before this Board, the Organization affirmatively took this position. Anticipating this argument, the Carrier argued that the claim as submitted before the Board is based on a single occurrence, i.e. "on January 12, 2012, they improperly bulletined a Carman relief road truck position #9193 without the required \$.25 per hour differential. . ." and that the claim filed on May 1, 2012 was clearly presented beyond 60 days from that single occurrence.

Upon its review of the entire record, the Board finds that the claim before the Board was not handled in the usual manner as required by Circular 1 and therefore, in line with a myriad of Awards, may not be considered on its merits. Relative to the Organization's argument that the instant claim is a continuing claim and timely presented, the Board would first note that this argument should have been clearly and precisely argued during the handling of this case on the property and not simply be alluded to by setting the beginning date of the claim. In any event, the Board concurs with the Awards the Carrier has cited in this regard and finds that the claim before the Board is based on a definitive action on a date certain, i.e. the bulletining of the position on January 12, 2012, and that a claim had to be filed within 60 days of such date in order to be timely under Rule 34.

Based on the fact that the claim before the Board was not timely filed it is void ab initio and, in line with a long line of Awards, the Board is compelled to dismiss the claim without reference to its merits.

**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.

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

**Dated at Chicago, Illinois, this 20th day of December 2016.**