

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12756
Docket No. 12511
94-2-92-2-29

The Second Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (International Association of Machinists
(and Aerospace Workers, AFL-CIO
(
(The Union Pacific Railroad Company
((former Missouri Pacific Railroad Company)

STATEMENT OF CLAIM:

"The Missouri Pacific - Union Pacific Railroad Company violated the controlling Agreement, Rule 52 and past practice in particular, by not limited thereto, when Carrier assigned other than Machinists to perform Machinist work, which included inspecting switch engines located in various rail yards in North Little Rock, and Little Rock, Arkansas."

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 waived right of appearance at hearing thereon.

On November 29, 1990, Carrier abolished four Train Yard Inspector Machinist positions located at the North Little Rock, Arkansas Locomotive Servicing Facility. At the time of the abolishments, the Organization contends, Engineers assigned to operate switch engines were instructed to perform daily inspection checks. On February 4, 1991, claim was filed contending that the Machinist's Agreement was violated with the abolishment and the transfer of Machinist work to Engineers.

Carrier denied the claim on both procedural and substantive grounds. On procedural grounds Carrier argued that the date of occurrence was the date of abolishment, and that the Organization had 60 days from that date to file its claim. It noted that the instant claim was not filed until after 70 days had elapsed. With regard to the merits, Carrier argued that making daily inspections of locomotives was not work reserved exclusively to Machinists.

The timeliness issue must be disposed of first. The Organization argues that the claim is a continuing one that may be filed at any time, only that liability is limited retroactively to 60 days. Carrier argues that the claim is based on a single event, job abolishments, and must be filed within sixty days of the date of abolishment. Several Awards of this Board have noted that a distinction exists between continuing claims and claims with continuing liability. Third Division Award 27327 extensively reviewed these distinctions; In that Award, the Board noted:

"Continuing claims are a device created to avoid a multiplicity of claims thereby eliminating a need for filing a new claim every day for that day's violation. (Second Division Award 3298.) And the language of the agreement permits the filing of a continuing claim "at any time," however, retroactivity of more than sixty days on monetary claims is not allowed. At issue here, though, is whether or not claims disputing work assignments resulting from a single occurrence, such as the abolishment of a position, are considered continuing claims which may be filed beyond sixty days after the occurrence of the abolishment.

There are a host of Awards, of this and other Divisions, which conclude that such claims, disputing prospective work assignments, while exhibiting characteristics similar to a continuing claim with regard to not being required to file a new claim every day thereafter, are not continuing claims that may be filed at any time. To be timely they must be filed within sixty days of the date of occurrence giving rise to the incident, i.e., the abolishment. Typical of these is Third Division Award 14450, holding:

'Recent awards of this Board consistently have held that essential 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 particular date. (Award Nos. 12045 and 10532) Here, the actin complained of was the abolishment of the section gang, including the position of the Section Foreman, with headquarters in Boonville, Missouri. It is undisputed that the abolishment and transfer of territory by Carrier occurred on or about July 21, 1958. Therefore, we find the Time Limit Rule is applicable as the claim was not filed within sixty days after the date of the occurrence upon which it is based. (Award Nos. 14131 and 12984.)'"

Award 27327, and those cited therein, is not in error. It will be followed here. The instant claim was based on a single occurrence, the abolishment of four Machinist positions, and the ensuing requirement that Engineers make an engine inspection. The abolishments were the date of occurrence, and any claims resulting therefrom must be filed within sixty days of that date, to be timely.

The claims are dismissed as untimely, without consideration of the substantive merits.

AWARD

Claim dismissed.

O R D E R

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 13th day of October 1994.