

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13568

Docket No. 13392

00-2-98-2-78

The Second Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

(International Association of Machinists and
(Aerospace Workers

PARTIES TO DISPUTE: (

(Consolidated Rail Corporation

STATEMENT OF CLAIM:

- “1. The Consolidated Rail Corporation is in violation of the Claimant’s prior rights “019” Seniority District, the Implementing Agreement of March 16, 1976, Rule Nos. 2, 3 and 4, and Appendix “C” of the IAM-Conrail May 1, 1979 Controlling Agreement and other Rules of that Agreement including Past Practice and Customs, and also, ‘The Agreement dated July 13, 1987, between Consolidated Rail Corporation and its employees represented by the International Association of Machinists and Aerospace Workers regarding the transfer of certain air brake and tool room work from Hollidaysburg Car Shop to the Juniata Locomotive Shop.’
2. Accordingly, the claimant, L. Karstetter, is entitled to the remedy as requested. The Claimant be made whole for any loss suffered as well as eight (8) hours pay per day at the applicable straight time rate of pay commencing from August 10, 1997 and continuing until claim is settled satisfactorily under the terms of the Agreement.”

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.

By this claim the Organization protests the Carrier's assignment of the work of repairing single car test devices to a Machinist at the Hollidaysburg Car Shop commencing on August 10, 1997, rather than to the Claimant, a Machinist within the same Seniority District whose position it is to repair single car test devices at Juniata Locomotive Shop.

As background to this dispute, the Carrier decided to transfer Air Brake and Tool Room work from Hollidaysburg to Juniata in 1987, and entered into an Agreement with the Organization dated July 13, 1987 which, in pertinent part, listed 39 positions (including repairing single car test devices), which the parties agreed would be transferred. It also states:

- "1. As the above Machinists' work is transferred, the 39 positions to be created at Juniata to perform this work will be bulletined as prior right Car Shops positions.
2. Each prior right Car Shop Machinist awarded such position shall, on the effective date of the award, have his prior right transferred to the Locomotive Shops.
3. Following each initial award, the position will thereafter be treated as a prior right Locomotive Shops position."

After the work transfer, single car test devices from all over the system (including Hollidaysburg) were repaired at Juniata and placed into a general pool. Hollidaysburg management determined that such method was too costly for Hollidaysburg and was creating unnecessary delays in production due to availability problems. As a result, the Carrier built a Gauge Room at Hollidaysburg and made the decision to have its own

single car test devices repaired there rather than sending them to Juniata. It began assigning such work to a Machinist at Hollidaysburg on August 10, 1997, asserting that only two such repairs were performed on an average weekly, totaling 12 hours. This assignment is the basis for the instant claim, dated October 10, 1997, and submitted on October 14, 1997.

The Organization argues that the 1987 Agreement reserves the work of repairing single car test devices to the Claimant at the Juniata location, in line with his prior rights to that work. It contends that the Carrier violated those rights by transferring some of that work back to Hollidaysburg. The Organization requests compensation for the Claimant for eight hours a day for each day since the transfer of work back to Hollidaysburg, asserting that this is a continuing claim.

The Carrier initially argues that the claim should be dismissed as untimely since it was filed after 45 days from the decision to retain the work at Hollidaysburg and its assignment to the Machinist at that location. The Carrier contends that it exercised its inherent management right to utilize its manpower and equipment throughout its system to best fulfill its operational needs by performing the repair work in a more cost effective manner and increasing the productivity at Hollidaysburg. It argues that nothing within the July 13, 1987 Agreement reserves the work of repairing single car test devices to the Claimant or to the Juniata location, and notes that said Agreement only granted employees the ability to transfer their Hollidaysburg prior rights to Juniata, and did not limit the Carrier's right to do similar work elsewhere. It notes that the Claimant is still performing his job of repairing single car test devices at Juniata and suffered no loss of his position.

We have carefully reviewed the record in this case. We are of the opinion that the Organization failed to satisfy the time limits required by Rule 4-P-1 for the filing of a claim. That Rule requires that a claim be filed within 45 days of the date of the occurrence. In this case, while the liability may continue to accrue with each protested work assignment, the decision to stop sending Hollidaysburg single car test devices to Juniata and to assign it to a Machinist at Hollidaysburg commenced on August 10, 1997, as acknowledged by the Organization in its July 15, 1998 correspondence on the property. The October 10 claim filed with the Carrier on October 14, 1997 falls outside the required 45 day time period for initiation of claims. We are unable to accept the Organization's contention that this alleged violation is in the nature of the type of continuing claim where each separate job assignment is a new and independent

occurrence. The Board is of the opinion that there was a definite action whereby the work was transferred from Juniata back to Hollidaysburg and assigned to a Machinist at that location, which occurred on August 10, 1997, the date for the commencement of the requested remedy in the claim filed. See Second Division Award 6854; Public Law Board No. 2945, Case No. 71. Accordingly, the claim is untimely, and such procedural defect requires dismissal. Third Division Award 14450.

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 14th day of November, 2000.