Award No. 14450
Docket No. MW-12491

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the effective agreement when it on or about July 21, 1958 established or continued a section with headquarters at Franklin, Missouri, and assigned the position to an individual who holds no rights as Section or Relief Foreman.

(2) That the Senior furloughed Section Foreman or Relief Foreman holding seniority on Seniority District No. 1 be compensated at Section Foreman's rate of pay while the position was being filled by an individual holding no rights as such.

EMPLOYES' STATEMENT OF FACTS: On or about July 21, 1958, Mr. E. Inselman, when the section to which he was assigned was abolished, exercised seniority as section laborer on Section 119, headquarters at Boonville, Missouri, was assigned headquarters at Franklin, Missouri, furnished a small motor car and a set of tools to perform maintenance service on the Moberly Division while receiving compensation as section laborer assigned to Section 119 at Boonville, Missouri, and that the Roadmaster had complete and entire control over the activities of Mr. Inselman in performing the services which were identical in every respect to that of Section Foreman.

The Agreement in effect between the two parties to this dispute dated September 1, 1949, together with supplements, amendments, and interpretations thereto is by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS: Under date of November 20, 1959, General Chairman E. Jones of the Brotherhood of Maintenance of Way Employes filed claim with Division Engineer J. H. Hughes (Carrier's Exhibit A, Sheets 1 and 2), alleging, among other things, that:

"The Carrier violated the effective agreement when it on or about **July 21, 1958, established or continued** a section with headquarters at Franklin, Missouri, and assigned the position to an individual who holds no rights as Section or Relief Foreman." (Emphasis ours.)

Such an allegation is directly contrary to the facts.

On or about July 21, 1958, the Carrier abolished its Section Gang which had headquarters at Franklin, Missouri, and assigned the territory formerly covered by this gang (Franklin Yard) and the territory formerly covered by a gang which had headquarters at Fayette, Missouri, on Carrier's Moberly Branch, to the section gang at Boonville, Missouri.

No position of Section Foreman with headquarters at Franklin, Missouri, remained after July 21, 1958, and the work formerly performed by the Franklin section gang was thereafter performed by the section gang with headquarters at Boonville, Missouri, which is just across the Missouri River from Franklin, and some 2.6 miles distant from that point.

Division Engineer J. H. Hughes declined the claim presented by General Chairman Jones, and the said claim was subsequently appealed to the Chief Engineer, declined by him, and then apepaled to the undersigned highest operating officer of the Carrier designated to handle claims, discussed in conference on May 19, 1960, and declined by the undersigned on June 13, 1960.

All correspondence between the parties in handling this alleged claim on the property has been reproduced by the photocopy process, and is attached as Carrier's Exhibit A.

The controlling Agreement, No. DP-173, effective September 1, 1949, and the National Agreement of August 21, 1954, are on file with the Third Division, National Railroad Adjustment Board.

(Exhibits not reproduced.)

OPINION OF BOARD: On or about July 21, 1958, Carrier abolished its Section Gang, including the position of Section Foreman, which had headquarters at Franklin, Missouri. The territory formerly covered by the abolished Section Gang was assigned to Section Gang 119, Boonville, Missouri. Thereafter, Carrier assigned a member of the abolished gang as a Section Laborer to perform maintenance work on the Moberly Sub-division, a branch line between Franklin and Moberly.

Procedural objections were raised by the Carrier as grounds for dismissal of the instant claim without consideration of the claim on its merits. In the first instance, Carrier contends that the claim was not presented to the Carrier's authorized officer until November 20, 1959, although the occurrence which gave rise to the claim allegedly occurred on July 21, 1958. Carrier's position is that the claim is barred under Article V, Section 1 (a) of the August 21, 1954 Agreement, which in part provides as follows:

> "1 (a) 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 . . ."

Employes contend that the alleged violation is a continuing one and not subject to the provisions of Article V, Section 1 (a). Instead, Employes assert that the claim may be filed at any time under Section 3 of the Claim and Grievance Rule, although the monetary demand is limited to sixty days prior to the filing date.

Recent awards of this Board consistently have held that the 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 action complained of was the abolishment of the section gang, including the position of Section Foreman, with headquarters at Franklin, Missouri and the assignment of the territory to 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.)

In view of our decision, it is unnecessary to consider other procedural objections advanced by the Carrier. Accordingly, the Board finds the claim must be dismissed for failure to comply with the Time Limit Rule of the effective Agreement.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board does not have jurisdiction over the dispute involved herein; and

That the Claim is barred.

AWARD

Claim is dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of May 1966.

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