

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24023
Docket Number CL-23866

T. Page Sharp, Referee

PARTIES TO DISPUTE: { Brotherhood of Railway, Airline and Steamship Clerks,
Freight Handlers, Express and Station Employes
Illinois Central Gulf Railroad

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood (GL-9631 that:

1. The **Company** violated the terms of the Agreement between the Parties hereto at the Office of Division Engineer and **Track Supervisor**, Chicago Division, when it abolished Position No. 113, Clerk, and transferred work of the Position to other **Employes** not covered by the Clerks' Agreement, in **violation** of Rules 1 and 16 (c), among others, of the Clerks' Agreement.

2. Company now be required to compensate Claimant Carolyn D. **Gornick** a day's pay at the pro rata rate of the abolished position, \$57.34 per day, beginning April 3, 1978, five (5) days per week, until **Position** No. 113 was reestablished.

OPINION OF BOARD: On March 31, 1978, the Carrier abolished Position No. 113, Clerk. This position had worked a half day in the Division Engineer's office and the remaining half day in the office of the Track Supervisor. After the **abolition** of the position the duties performed for the Division Engineer were **transferred** to other clerks and the duties performed for the Track Supervisor reverted to him and his Track Inspectors. Since the filing of the claim the position has been reestablished, but **Claimant** does not have sufficient seniority to successfully bid the position.

Claimant filed a **claim** for \$57.34 per day for the week of April 3- April 7 and for each week thereafter alleging a violation of the Scope rule of the **Agreement**. While the claim for pay is continuing, nowhere in the correspondence on the property nor in the submission to the **Board** is there stated a claim that the violation is continuing.

The Carrier asserted as a defense to the claim that it had not been filed within the time limits of Rule 25(a) of the Agreement and was consequently barred from consideration. The Organization asserts that the time limit should begin on the first day that the job would have worked after the **abolishment**, April 3, 1978.

The Rule 25(a) reads:

"TIME LIMITS - GRIEVANCES

(a) All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the company authorized to receive **same**, within sixty days from the date of the occurrence on which the claim or grievance is based. Should any such **claim** or grievance be disallowed, the company shall, within sixty days from the date same is filed, notify whoever filed the **claim** or grievance (the employee 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 company as to other similar **claims** or grievances."

This Rule sets the **benchmark from** which the sixty day limitation period runs. It is sixty days **from** the date of the occurrence on which the claim or grievance is based. The issue of the time of occurrence of a violation if any, has been considered by the Board in the past. **The position was** succinctly stated in **Award 12045** when the **Board** held:

"Our **review** of the numerous **awards** concerned with the time limit issue distinguished between a continuing claim and a non-continuing **claim** largely on the basis of whether the violation is **performed** repeatedly or is a single or **final act** which occurs on a specific date such as removal from a seniority list or the abolishment of a position and transfer of work to an **employee** of another class. The awards involving abolishment of a position and transfer of work to another class, as Award No. 10532, hold that such a violation is not of the continuing type. In the case of **Bar**, Carrier abolished the position of Material and Supply Clerk on April 1, **1958** and transferred work to the Car Foreman. The **abolishment** of the position took place on that date; and if there was a violation, it occurred then and only then."

The same position was affirmed by Public Law Board **1812**, Award **42**; Awards **19341** and **14450** (Third Division) and Award **6854** (Second Division).

The date certain for **commencing** the period of Rule 25(a) **was** March 31, 1978. Inasmuch as the claim **was** not timely filed, it is barred and will not be considered by the Board.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record **and** all the evidence, finds **and** holds:

That the parties waived oral hearing;

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 has jurisdiction over the dispute involved herein; and

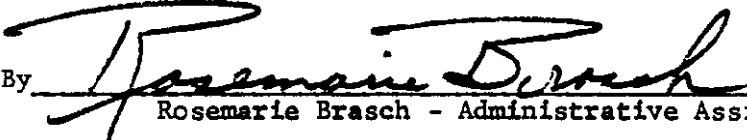
That the **Claim** is barred.

A W A R D

Claim dismissed.

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

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated **at** Chicago, Illinois, this 15th day of November 1982.