

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 34168
Docket No. SG-35426
00-3-99-3-319**

The Third Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

PARTIES TO DISPUTE: (
(Brotherhood of Railroad Signalmen
(Union Pacific Railroad Company (former Chicago and
(North Western)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad (C&NW):

Claim on behalf of K.L. Hopwood for payment of the differential between the Assistant Signal Maintainer’s rate and the Signal Maintainer’s rate of 136 hours plus skill differential pay and continuing until this dispute is resolved, account Carrier violated the current Signalmen’s Agreement, particularly Rule 59, when it abolished the Signal Maintainer’s position at Beverly, Iowa, and bulletined the position as an Assistant Signal Maintainer’s position on November 5, 1997. Carrier’s File No. 1127026. General Chairman’s File No. 7c594126.1. BRS File Case No. 11002-CNW.”

FINDINGS:

The Third 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.

There exists in this case a procedural issue involving time limits for handling claims which must be addressed as a threshold item before any consideration can be given to the merits of the dispute.

The time limits rule on this property is Rule 52. That rule reads, in pertinent part, as follows:

“Rule 52 - TIME LIMITS

(a) 1. All claims or grievances must be presented in writing by or on behalf of the employee involved to the officer of the Carrier authorized to receive same, within 60 days from date of the occurrence on which the claim or grievance is based. Should any such claim or grievance be disallowed, the carrier shall, within 60 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 Carrier as to other similar claims or grievances.

* * *

(b) A claim may be filed at any time for an alleged continuing violation of any agreement and all rights of the claimant or claimants involved thereby shall, under this rule, be fully protected by the filing of one claim or grievance based thereon as long as such alleged violation, if found to be such, continues. However, no monetary claim shall be allowed retroactively for more than 60 days prior to the filing thereof. With respect to claims and grievances involving an employee held out of service in discipline cases, the original notice of request for reinstatement with pay for time lost shall be sufficient.”

From the Board’s review of the record of this case, the chronology of events which preceded the filing of the claim is as follows:

6-20-97 Signal Maintainer “pending return” vacancy advertised.
No bids received.

- 10-06-97 Signal Maintainer "permanent" vacancy advertised.
No bids received.
- 11-04-97 Signal Maintainer "permanent" vacancy abolished.
- 11-20-97 Assistant Signal Maintainer position bulletined.
Awarded to Claimant.
- 1-26-98 Claimant bid for and awarded a Signal Maintainer position.
- 2-03-98 Claim filed on behalf of Claimant requesting "The Carrier now
be required to compensate K. L. Hopwood . . . the difference
between ASM Step 3 rate and SM rate for the month of
January. Total of 136 hours plus skill pay at SM straight-time
rate."

The claim as initiated on February 3, 1998, alleged a violation by the Carrier of the provisions of Rule 59 - ESTABLISHED POSITIONS which reads as follows:

"Rule 59 - ESTABLISHED POSITIONS

Established positions will not be discontinued and new ones created under a different title covering relatively the same class of work, for the purpose of reducing rates of pay or evading application of these rules."

During the on-property handling of this dispute and before the Board, the Carrier contended that the claim of February 3, 1998 was presented outside of the 60-day time limits specified in Rule 52(a)1 and therefore should be summarily dismissed by the Board.

The Organization argued that Rule 52(b) is applicable in this situation inasmuch as the claim as presented was continuous in nature and therefore should be reviewed by the Board subject to the applicable language of Rule 52(b).

The issue of continuing claims versus claims with continuing liability is not new to the Board. There is a clear distinction between a continuing claim that is one in which the violation occurs repeatedly over a continuing period, and a claim which is based on a single occurrence but which may have continuing liability.

In this case, the fundamental issue is whether or not the Carrier discontinued an established position and created a new position under a different title covering the same class of work for the expressed purpose of reducing the rates of pay.

From the chronology outlined above, the event which triggered this chain occurred when the Signal Maintainer position was abolished and the Assistant Signal Maintainer position was created. That single date was November 20, 1997. It is from that single date that the time limits for making a claim because of the alleged violation began to toll. This claim is not a continuing violation as that language is used in Rule 52(b). It was based on a definitive action which occurred on a date certain. It was not an action repeated on more than one occasion. The claim was ultimately presented on February 3, 1998 which is beyond 60 days from the date of the occurrence and is, therefore, not a valid claim.

The Board's position in this regard finds support in Third Division Award 25538 which stated in pertinent part:

"The instant claim is based on an act that occurred on September 21, 1981, and consistent with solid body of case law on this point is not continuing, although a continuing liability may flow from the specific pivotal act."

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 Third Division

Dated at Chicago, Illinois, this 20th day of July, 2000.