

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 36257  
Docket No. MS-36231  
02-3-00-3-421**

**The Third Division consisted of the regular members and in addition Referee Nancy Faircloth Eischen when award was rendered.**

**(Sidney Hooser**

**PARTIES TO DISPUTE: (**

**(CSX Transportation, Inc. (former Chesapeake and  
( Ohio Railroad)**

**STATEMENT OF CLAIM:**

- “(1) The Carrier has violated Scope Rule 1 and others of the C&O General Agreement, when it began to use Mr. Alex Chandler and others to sort, distribute, collect and apply postage to the mail in Baltimore, MD.**

**In October 1997 Inter-carrier Revenue, Property Accounting, Car Acct. and Administrative Services was transferred to Jacksonville, FL. (CSXT Agreement 6-049-97). At that time Record & Mail Clerk Position 0215-103 was abolished and Mr. Chandler was brought in as a Accu Staff temporary employee to assume the majority of the mail duties for CCSI, Baltimore Service Lane and Professional Services.**

- (2) This claim is for a days pay at Record & Mail Clerk rate effective August 24, 1998 and continuing each day until this work is returned to C&O District 3 in Baltimore and put under the jurisdiction of the C&O General Agreement.**

- (3) Also in dispute is a waiver of the 60 day time limit, which would make this claim effective October 27, 1997.**

**On October 27, 1997 CSXT moved 25 Division Clerk jobs to Jacksonville. 24 of these jobs were filled by new employees under Side Letter 8 to CSXT Agreement 6-049-97. These new employees could not be displaced until October 28, 1998.**

If for any reason, valid or not, CSXT abolished my job as a Division Clerk, I would have been unable to displace any of the 24 Division Clerks hired by CSXT in November 1997. This claim was filed at the earliest date possible and still maintain my displacement rights.”

**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.

The gravamen of this claim occurred on or about October 27, 1997, when Mail and Records Clerk Position No. 0215-103 was abolished and the Intercarrier Revenue, Property Accounting, Car Accounting and Administrative Services Departments that utilized the services of that position were transferred to Jacksonville, Florida, pursuant to CSXT Agreement 6-049-97. Thereafter, some mail handling duties previously performed by that position were transferred to and performed by Alex Chandler, an employee of CCSI, a separate company. Nearly a year after that transaction, the instant claim was filed by Petitioner Sidney Hooser on August 24, 1998. The claim contends that the abolishment and transfer of the work violated the Scope Rule rights of S. Hooser and some 125 CCSI, Baltimore Service Lane, and Professional Services employees who remained in Baltimore, Maryland.

On its face, the claim filed by Petitioner Hooser on August 24, 1998 is fatally untimely under the plain language of Rule 27 ½ of the C&O Agreement, which reads in pertinent part, as follows:

**“(a) All claims or grievances must be presented in writing by or on behalf the employee 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. 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.”**

**The Petitioner implicitly acknowledged his time limit problems when, before filing, he requested the Carrier to waive the 60-day time limit but the Carrier declined to do so. He then asserted that his claim is a “continuing claim” and, therefore, was timely filed retroactively to October 27, 1997. However, the Claimant’s reliance on the “continuing claim” theory is misplaced in the facts of this case.**

**In lead Third Division Award 14450, the Board succinctly defined the distinction between a “continuing” and a “non-continuing” claim as follows:**

**“Recent awards of this Board 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.”**

**In the present case, the grievable occurrence was a discrete occurrence, i.e., the abolishment of the Baltimore, Maryland, position in dispute and the transfer of some of its duties to Jacksonville, Florida, pursuant to CSXT Agreement 6-049-97. Clearly, the Petitioner’s claim is not a continuing claim under the well-reasoned definition cited above, and followed by numerous other Awards wherein the Board was charged with the responsibility of interpreting the time limits language of Article V of the August 21, 1954 National Agreement. See, for example, Second Division Awards 11471 and 13331, as well as Third Division Awards 21376, 23953, 27327, 29523, 29593, 29870, 30007, 31043, 31239 and 34168. Accordingly, the claim must be dismissed without considering or commenting upon the alleged merits.**

**Form 1  
Page 4**

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**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 28th day of October 2002.**