

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19341
Docket Number CL-17316

Robert M. O'Brien, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees

PARTIES TO DISPUTE: (
(Southern Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6333)
that:

(a) Carrier violated the clerical Agreement at Hickory, North Carolina, beginning August 30, 1965, when it allowed or required eight hours clerical work each date to be performed by Yard Conductors, Operators and Truckers at that location.

(b) Carrier shall be required to compensate Mr. J. A. Ervin, Jr., eight (8) hours' pay each date at the pro rata rate, beginning August 30, 1965, and continuing until a clerical position was properly advertised at Hickory, North Carolina, on February 14, 1966.

OPINION OF BOARD: On April 1, 1965, a clerical position at Hickory, N.C., was abolished. The work performed by the incumbent of this position was subsequently performed by Yard Conductors, Operators and Truckers at Hickory, which the Organization contends, violated the Agreement Rules in effect on this property, particularly Rules 1, 2, 3, and 20.

The Carrier initially raised a procedural objection to the claim, contending that the claim was not presented to the Carrier's authorized officer until October 27, 1965, although the occurrence which gave rise to the claim allegedly occurred on April 1, 1965. Carrier's position is that the claim is barred under Article V, Section 1(a) of the August 21, 1954 Agreement, requiring claims to be presented within 60 days of the date of occurrence.

The Organization contends that the alleged violation is a continuing one and not subject to the provisions of Article V, Section 1(a).

Referee Ives, in Award 14450, clearly defined the distinction between a continuing and non-continuing claim when he stated therein:

"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 case at bar, the action complained of was the abolishment of the clerical position at Hickory, N. C. and the subsequent transfer of the clerical work at Hickory to Yard Conductors, Operators and Truckers. It is undisputed that said abolishment and subsequent transfer of work occurred on or about April 1, 1965. Therefore, we are of the opinion that the Time Limit Rule is applicable as the claim was not filed within 60 days after the date of the occurrence upon which it is based.

Consequently, it is unnecessary to consider the merits of the claim since the claim must be dismissed for failure to comply with Section 1(a) of the August 21, 1954 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 Employees involved in this dispute are respectively Carrier and Employees 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:


Executive Secretary

Dated at Chicago, Illinois, this 14th day of July 1972.