

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 Employees
 { 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 Employees 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 as 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 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

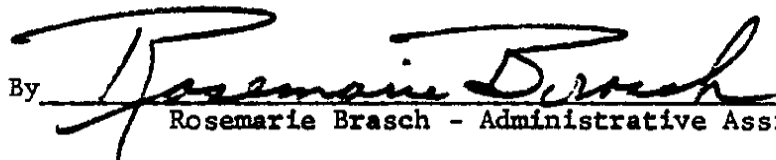
That the Claim is barred.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

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