

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33967
Docket No. CL-33341
00-3-96-3-384**

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(Southern Pacific Transportation Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-11233) that:

1. Carrier violated Rules 34(a), 22, 26 and all other correlated rules of the current Clerical Agreement when beginning July 16, 1994, and continuing, Carrier failed to bulletin a new position or vacancy.
2. Carrier will now be required to compensate Claimant L. R. Goodeill at the applicable overtime rate of position #652, assigned rate of \$118.59 beginning July 16, 1994, and continuing until violation ceases.”

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.

According to the record, on May 11, 1994, Clerk W. Dawson commenced working on Position T652, General Clerk. Time card claims seeking eight hours per day submitted by the Claimant were received by the Carrier on September 12, 1994 which alleged that for the second pay period in July 1994 and the first and second pay periods in August 1994, a violation of Rule 34(a) existed by the Carrier's "using Clerk W. Dawson on a special assignment for more than 29 days." The Director of Timekeeping denied payment by letter dated November 7, 1994.

A claim dated December 27, 1994 was filed by the Organization asserting that the Carrier violated Rule 34(a) when, beginning July 16, 1994, it did not advertise a vacancy that was to continue beyond 30 days.

Rule 34(a) provides in relevant part that "[n]ew positions and/or vacancies of doubtful duration which will be continued beyond thirty (30) calendar days shall be advertised prior to the expiration of the thirty (30) calendar days. . . ." Rule 24(a) requires that "[a]ll claims or grievances must be presented in writing . . . within 60 days from the date of occurrence on which the claim or grievance is based."

The time claim filed by the Claimant on September 12, 1994 seeking compensation beginning in the second pay period in July 1994 and the claim by the Organization on December 27, 1994 alleging a violation "beginning July 16, 1994" were filed beyond the 60-day period required in Rule 24(a) and are untimely. The record shows that Clerk Dawson began working the position in question on May 11, 1994. Giving the Claimant and the Organization the benefit of the doubt that it was not known how long the vacancy would exist when it was initially filled, as of June 11, 1994, the position had been filled for 30 days. If a posting violation of Rule 34(a) existed ("[n]ew positions and/or vacancies of doubtful duration which will be continued beyond thirty (30) calendar days shall be advertised prior to the expiration of thirty (30) calendar days"), June 11, 1994 was the outside limit when the time period for filing a claim began to run. The Claimant did not timely protest until September 12, 1994 and the Organization could not cover that untimeliness in its subsequent protest.

This is not a continuing violation. As framed by the claim, the protest is over a singular act — the Carrier's failure to advertise a vacancy within 30 days.

The Organization asserts that the District Chairman ". . . verbally grieved the Carrier's violation on several occasions." That action does not satisfy the 60-day filing

requirement in Rule 24(a). Rule 24(a) requires that “[a]ll claims or grievances must be presented in writing . . . within 60 days from the date of occurrence on which the claim or grievance is based” [Emphasis added]. There is no discretion in that language to allow for “verbal” grievances.

Nor is there evidence sufficient to show that the Claimant or the Organization was lulled by the Carrier into believing that the matter would be resolved or further considered and that the filing of a claim should be deferred. Such a scenario would bar the Carrier from relying upon the time limits in Rule 24(a). But the evidence in the record only shows that the Organization verbally raised the dispute with the Carrier. Without sufficient evidence that could lead to a conclusion of estoppel against the Carrier, the Claimant and the Organization were obligated to file a written claim within 60 days. That was not done.

The claim shall be dismissed as untimely filed.

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 March, 2000.