

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44568
Docket No. MW-45524
22-3-NRAB-00003-190420**

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

**(Brotherhood of Maintenance of Way Employees Division
(IBT Rail Conference**

PARTIES TO DISPUTE: (

(Lake Superior & Ishpeming Railroad Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier improperly abolished and failed to rebulletin section foreman positions at Section #3 West Yard and Section #5 Mine Foreman in January 2018 (System File C-02-18-010-02-L LSI).**
- (2) As a consequence of the violations referred to in Part (1) above, Claimants S. Niemi and R. Wilson shall each now be compensated:**
 - ‘1) the differential in pay between the Section Foreman’s rate of pay for all straight time and overtime to which they were entitled and that which they were actually paid for all time worked beginning January 9, 2018 and CONTINUING until such time as the Section #3 and Section #5 Foremen’s positions are properly reestablished in accordance with the Agreement; in addition to**
 - 2) the reimbursement of all additional automobile mileage expenses which claimants incurred due to having to drive a farther distance than they would have incurred in reporting to Section #3 and Section #5 respectively.’ (Emphasis in original).”**

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 timeliness of the claim must be addressed as a threshold issue. According to the record, the Carrier decided to consolidate three existing section gangs into one. The three foreman positions were abolished effective January 8, 2018. One foreman position was bulletined on January 2, 2018 to be assigned effective January 15, 2018. The claim is to recover the pay differential for the two previous foremen whose positions were abolished. They began working on January 9, 2018 at a lower pay rate.

The claim was not received by the proper Carrier official until March 16, 2018, which was sixty-four (64) days after the two claimants began working in their lower paid positions.

Rule 24-Claims and Grievances. Section 1 (a) provides, in pertinent part:

“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 sixty (60) days from the date of the occurrence on which the claim or grievance is based ...”

The Organization contends that the starting date for the time limit clock was January 15, 2018, which was the effective date when the successful bidder on the new foreman position began working in it. This contention lacks Agreement support and must be rejected. The date of the occurrence on which the claim is based was the effective date the claimants' former foreman positions were abolished and they began working lower paying positions. That was not later than January 9, 2018.

The claim also contained the capitalized word "... CONTINUING ...". However, in context, this reference was only to the period of time for which the pay differential was sought. Because the claim was based on the singular, one-time event of abolishing claimants' foreman positions, it is not a continuing claim.

Because the claim was not filed within the applicable time limit, it is not valid and must be denied.

AWARD

Claim denied.

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 8th day of October 2021.