Form 1 **NATIONAL RAILROAD ADJUSTMENT BOARD**
SECOND DIVISION

Award No. 13506
Docket No. 13345
00-2-98-2-33

The Second Division consisted of the regular members and in addition Referee James E. Conway when award was rendered.

PARTIES TO DISPUTE:
(Brotherhood Railway Carmen Division
(Transportation Communications International Union
(
(CSX Transportation, Inc. (former Chesapeake and Ohio
(Railway Company)

STATEMENT OF CLAIM:

"Claim of the Committee of the Union that:

1. That the Chesapeake and Ohio Railroad Company (CSX Transportation, Inc. (hereinafter referred to as "carrier") violated the controlling Shop Crafts Agreement specifically Rule 32 (a) and 154 (a), when on or about February 18, 1997 other than Carmen were assigned to perform work reserved exclusively for Carmen.

2. Accordingly, the Carrier be instructed to compensate Carmen C. E. Johnson ID #623192, M. H. Ford ID #627232 and T. G. O'Meara ID #628779, seven (7) days at eight (8) hours pay each at Carman's rate and one half for the said violation."

FINDINGS:

The Second 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.

This claim was submitted to the Carrier's Mechanical Superintendent on behalf of the three Claimants cited above on March 3, 1997. It protests the Carrier's actions in selling several scrap railcars unable to move on their own wheels to Louisville Scrap Materials Company of Louisville, Kentucky, and thereafter allowing the purchaser to come onto the Carrier's property at Clifton Forge, Virginia, between February 18-25 to dismantle them for removal pursuant to the terms of the sale.

The Organization argues that the Carrier violated Rules 32 (a) and 154 (a) of the Agreement in that covered Carmen held exclusive rights to the work in dispute. Those Rules read as follows:

> "RULE 32 (a). Effective November 1, 1964 – None but mechanics or apprentices regularly employed as such shall do mechanics' work as per the special rules of each craft except foremen at points where no mechanics are employed."
>
> "RULE 154 (a): ... Carmen's work shall consist of building, maintaining, dismantling (except all-wood freight train cars), painting, upholstering and inspecting all passenger and freight cars, both wood and steel...."

The Carrier's response to the claim asserted that the cars were incapable of moving on their own wheels and were sold on an as is, where is basis. Consistent with prior arbitral authority, the work of dismantling such stock has never been reserved exclusively to Carmen. Additionally, consideration of the claim is barred by two procedural defects. First, the initial claim was improperly filed by the Organization. Article II of the Agreement dictated that the claim be filed in the first instance with the Carrier' highest designated officer, not C & O Business Unit Mechanical Superintendent Montgomery. Second, the claim was not received by the Board within the time limits prescribed by Rule 35. That Rule reads in part:

> "All claims or grievances involved in a decision by the highest designated officer shall be barred unless within 9 months from the date of said officer's decision proceedings are instituted by the employe or his duly authorized representative before the appropriate division of the National Railroad Adjustment Board...."

Here, the Carrier maintains, the Organization was required by the Rule to file its Notice of Intent with the Board not later than April 7, 1998. Although dated March 24, 1998, the Board did not receive the Organization's Notice of Intent until April 13, 1998, six days beyond the time limits prescribed in Rule 35. [1]

Because the claim was initially filed as a violation of the Classification of Work Rule and not as a Article II Scope violation of Article II - Subcontracting of the September 25, 1964 Agreement, the Organization argues that its filing with Mechanical Superintendent B. R. Montgomery, the top local officer, was appropriate, citing Second Division Award 12380 in support. Although that decision neither discusses nor makes findings upon any procedural issue, the Board concludes that no consideration of either the propriety of the initial filing or of the related debate over whether the facts pose issues of contracting out or classification of work are required. Because the Organization's Notice of Intent to the Board claim was not postmarked within nine months from the date of the decision of the Carrier's highest designated officer, it must in accordance with the decisions of numerous prior Awards be dismissed. See, e.g., Third Division Award 19579.

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 Second Division

Dated at Chicago, Illinois, this 17th day of April, 2000.

[1] This date was confirmed by communication with the Board's Arbitration Assistant on January 12, 2000.