

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William M. Edgett, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

SOUTHERN PACIFIC TRANSPORTATION COMPANY
(Pacific Lines)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when, without prior notice to General Chairman Ashley as required by Article IV of the National Agreement dated May 17, 1968, it assigned the work of filling and leveling the location of the dismantled General Shop, grading in connection with relocation of tracks, loading scrap ties and fill material, dismantling a freight dock and backfilling fire line trenches to outside forces. (System File MofW 152-695).

(2) Tractor Bulldozer Operator Henry L. Huls be allowed pay at his straight time rate for a number of hours equal to that expended by outside forces in performing the work referred to within Part (1) of this claim beginning on February 2, 1969.

(3) The Carrier shall also pay the claimant six percent (6%) interest per annum on the monetary allowance accruing from the initial claim date until paid.

EMPLOYEES' STATEMENT OF FACTS: Claimant Huls holds machine operator's seniority dating from April 28, 1942. He is currently assigned as a Tractor Bulldozer Operator.

On or about July 2, 1968, the Carrier entered into a contract with J. K. Harrison Equipment Rental to provide a Traxcavator (Model 955) and an operator thereof to perform the work of filling in, leveling and grading the area of the dismantled General Shop Building, the grading work in connection with relocation and removal of tracks, the loading of ties and surplus fill material, the dismantling of a freight dock, the back filling of fire line trenches, etc. Work of this character is reserved to and has been customarily performed by machine operators within the Carrier's Maintenance of Way and Structures Department, utilizing Carrier-owned or rental equipment. The operator of the Traxcavator does not hold any seniority rights within the scope of the Carrier's agreement with its Maintenance of Way employees. The claimant was available, fully qualified, and could have efficiently and expeditiously performed the work.

ing work on this property under a series of service contracts, since July, 1968. The contract work performed by that Company ended on May 23, 1970.

Claim based on alleged violation of agreement resulting from the contracting of this work to J. K. Harrison Company was first submitted to Carrier's Division Superintendent in letter dated April 3, 1969 (Carrier's Exhibit A), received April 4, 1969, some nine months after the occurrence on which alleged claim was based, said claim being presented in favor of Tractor Bulldozer Operator Henry Huls, Los Angeles, for payment at his regular straight time rate of pay "... for all time consumed by Mr. James Kelly, an employe of J. K. Harrison Equipment Rental, 60 days retroactive from the date of this claim, and all subsequent days thereto, until such time as the Carrier complies with the provisions of the Agreement cited in Part I of our Statement of Claim."; also "... In addition to the money amount claimed herein, the Carrier shall pay claimant an additional amount of 6% per annum compounded annually on the anniversary date of this claim. . . ." for alleged violation of Article IV, Contracting Out, of Agreement dated May 17, 1968, and Rules 1, 3 and 5 of the current agreement:

"... when on July 2, 1968, and subsequent days thereto, it deprived and/or denied employes . . . the right to perform the work of their assigned positions . . . and, instead, without notifying the General Chairman . . . contracted it to J. K. Harrison Equipment Rental. . . ."

By letter dated May 1, 1969 (Carrier's Exhibit B), Carrier's Division Superintendent denied the claim.

By letter dated May 5, 1969 (Carrier's Exhibit C), Petitioner's District Chairman rejected Carrier's denial.

By letter dated May 23, 1969 (Carrier's Exhibit D), Petitioner's General Chairman appealed the claim to Carrier's Assistant Manager of Personnel, who, following conference on the property July 22, 1969, denied the claim by letter dated July 23, 1969 (Carrier's Exhibit E).

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier has raised, as a preliminary objection, a defense based on the applicable time limit rule, which reads:

"RULE 44.

CLAIMS AND GRIEVANCES

Claims or grievances shall be handled in accordance with Article V of Agreement of August 21, 1954, as follows:

1. All claims or grievances arising shall be handled as follows:

(a) All claims or grievances must be presented in writing by or on behalf of the employe involved, to the officer of the Carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based. . .

* * * * *

3. A claim may be filed at any time for an alleged continuing violation of any agreement and all rights of the claimant or claimants involved thereby shall, under this rule, be fully protected by the filing of one claim or grievance based thereon as long as such alleged violation, if found to be such, continues."

The Organization takes the position that this is a continuing violation, and as such is not barred.

Thus, the initial question to be decided by the Board is whether the claim is a continuing one. It is not disputed that a contract was let on July 2, 1968, for the work in question, and that the claim was not filed until April 3, 1969.

While the Organization contends that transactions with the outside contractor occurred on dates subsequent to July 2, 1968, the record does not support that contention. The facts of record show that the contract was let on that date. Of course, work under it continued for some time. However, the decisions of the Board (for example, see Awards Nos. 14368, 15691 and 16161), support the view that Carrier's alleged violation occurred on the named date and that without probative evidence to the contrary, the time limits for filing the claim began to run on that date.

Since the claim was not filed within the time limits provided in the Agreement it must be dismissed.

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.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 29th day of July 1971.

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