

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21376
Docket Number CL-21287

Dana E. Eischen, Referee

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employes

PARTIES TO DISPUTE:

(Chicago and Eastern Illinois Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood,
GL-7889, that:

1. Carrier violated the Clerks' **Agreement** when it contracted with persons not covered by the Agreement to perform its janitorial work at its 26th Street Yard Office and Yard Center Office - such action being in violation of Rules 1, 2, 5, and 80 of the **Agreement**. (Carrier's file M 210-48)

2. **Carrier shall now be required to compensate Claimants as outlined below:**

(a) Clerk C. W. **Keilman**, 26th Street Yard Office, for three hours' pay at the pro rata rate beginning September **21, 1973** and continuing **seven days per week until violation is corrected**.

(b) Clerk L. W. Schmidt, Yard Center, for **eight hours' pay** at pro rata rate **beginning** September **21, 1973** and continuing five days per week, until violation is corrected.

(c) Clerk W. E. **Burns**, Yard Center, for eight hours' pay at pro rata rate beginning September **21, 1973** and **continuing** seven days per week until violation is corrected.

(d) Clerk O. V. **Cochran**, Yard Center, for eight hours' pay at pro rata rate **beginning** September **21, 1973** and **continuing** five days per week until violation is corrected.

(e) Clerk R. K. **Ingle**, Yard Center, for eight hours' pay at pro rata rate **beginning** September **21, 1973** and continuing seven **days** per week until violation is corrected.

(f) Clerk C. S. Rolder, Yard Center, for eight hours' pay at pro rata rate beginning September **21, 1973** and continuing **seven days per week until** violation is corrected.

(g) Clerk A.G. **Schnoor**, Yard Center, for eight hours' pay at pro rata rate beginning September **21, 1973** and **continuing** seven **days per week** until violation is corrected.

(h) **Clerk W. Phelps, Yard** Center, for eight hours' pay at pro rata rate beginning September **21, 1973** and continuing seven days per week until violation is corrected.

3. Claim is to include any successor(s) to those Claimants named; which, of course, can easily be **determined through** a joint check of the **payroll** records because the positions occupied by Claimants are all identified by title and job **number**.

OPINION OF BOARD: We are met at the threshold of this case by the procedural/jurisdictional question whether the claim herein is time-barred by the **60-day** rule of Article V (1) of the National Agreement **of August 21, 1954**. Careful analysis **of the** overall record convinces us that it is so barred.

The claim, filed September **21, 1973**, **alleges** a violation of the Scope Rule when Carrier contracted out janitorial work at two of its facilities in **Chicago**: the 26th Street **Yard Office** and the **Yard** Center Office. The facts **are** not disputed on the record. By **Agreement** executed **on September 1, 1969** Carrier **contracted for the** performance of janitorial service at the **Yard** Center Office by Ward's Janitorial Service. Since **that time** Ward's has **performed all** such service at **Yard Center** Office. **On March 9, 1971** Carrier **contracted with one Fred Sparks to perform** janitorial service at 26th Street **Yard Office**. Since that date Sparks has performed the janitorial work at that location. The instant claims were initiated by a September **21, 1973** letter from the **Organization's** General Chairman who informed Carrier that "on a recent trip the undersigned discovered that **janitor** work required by the **Carrier** is being performed **by Carrier employes not covered by the Clerks' Agreement and by persons who are not even employes of the Carrier . . .**" The **claims were** denied by Carrier on several grounds, including lack of timeliness under the Time Limit Rule. The Organization counters that this is a "**continuing claim**" **and therefore was timely filed on September 21, 1973.**

The principles governing determinations of continuing violations have **been enunciated** carefully **in prior Awards** of this Division. See Awards **11167, 14450, 15134, 19341 et al.** Both parties cite other **Awards** in support of their **positions herein, all** of which we have reviewed with care. Of the two Awards cited **by** the Organization, Award **10379** clearly is distinguishable on the facts and Award **18627** is unintelligible. One of our other **Awards**, however, appears to us directly on point with the instant **case**:

"**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.**"

Review of the factual **record** before us shows the alleged violation **forming** the **gravamen** of this **claim** was the contracting out of janitorial services. The contracting out occurred on September 1, 1969 and March 9, 1971. The **claim was not filed until** several years later **in September 1973**. These are not "continuing violations" or "continuing claims" as those **terms** have been established by **Board** precedent. We have no choice but to dismiss the claim as time-barred without reaching the merits. 2

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 Employes** involved in this dispute are respectively **Carrier** and **Employes** 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 time-barred.**

A W A R D

claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 28th day of **January** 1977.