

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25059
Docket Number SG-24629

Ida Klaus, Referee

PARTIES TO DISPUTE: ((Brotherhood of Railroad Signalmen
(Southern Pacific Transportation Company (Western **Lines**)

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Pacific **Transportation** company:

On behalf of Signal Foreman A. A. Perry, Leading Signaller J. C. Holmes, and Signalmen H. D. Williams and R. E. **Wierema**, for 24 hours' pro rata pay each account Carrier using a contractor (**Stienly Electric Inc.**) to install signal PVC conduit at Mile Post 37.1 for the widening of Highway 237, Mt. View, California." (Carrier file: SIG 152-428)

'OPINION OF BOARD: This claim concerns signal cable work contracted out by the Carrier in connection with the relocation of an underground circuit along a Carrier right of way. The claim alleges that the use of outside employees to perform the work violated the Scope Rule of the Signalmen's Agreement.

The disputed work "as performed by the outside employees on February 10, 11 and 12, 1981. The claim "as initiated by letter dated May 3, 1981, and received two days later.

As its preliminary response, the Carrier alleges that the claim is time barred under the 60-day limitation prescribed by the Agreement. Citing Rule 60(a) of the Agreement and Section 3, First (**i**) of the Railway Labor Act, as amended, the Carrier holds the claim to have been improperly initiated and thus beyond the jurisdiction of this Board to entertain it.

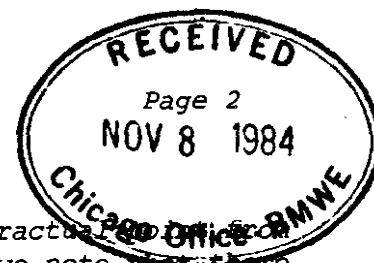
Rule 60(a) specifies that claims must be presented "within 60 days from the date of the occurrence on which the claim is **based**".

The Carrier considers the applicable date of occurrence to be the three days of February 10-12, 1981, when the work under challenge "as performed. Thus it counts 82 days as the time elapsed between those dates and the receipt of the claim.

In the petitioner's view the operative date marking the start of the **60-day** period is the day on which the signal force first became aware of the disputed work, which "as March 27, 1981, the day the signal gang installed the completed cables on the Carrier's right of way. By that reckoning, the claim was initiated **well** within the prescribed period.

The Board must reject the petitioner's reasoning. The act complained about is the improper performance of work. That act is the contractual violation on which the claim is based. The date on which the act took place marks the beginning of the 60-day limitation period for initiating the claim. The date

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of the discovery of the violation is not the critical contractual point on which to measure the start of the 60-day period. *Indeed, we note that there was, in fact, ample time from the alleged date of discovery to initiate a proper claim, but the petitioner did not move to do so until the prescribed time had elapsed.*

Accordingly, we must hold that the claim was untimely presented and that it is improperly before this Board. We are without authority to consider it.

The claim must be dismissed for lack of jurisdiction.

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.

A W A R D

Claim dismissed.

NATIONAL **RAILROAD** ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 4th day of October 1984.