

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26689

Docket Number SG-26285

Robert W. McAllister, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Seaboard System Railroad (Clinchfield))

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Seaboard System Railroad (Clinchfield):

Claim on behalf of Lead Maintainer J. L. Sifferd, Maintainers L. E. Broyles, B. Lewis, D. A. Fender, B. W. Burton, for 20 hours pay each at time and one-half rate, November 5 and 6, 1983. Also, claim that B. E. Carlton and B. W. Burton be paid eight (8) hours each at time and one-half rate, November 10, 1983, account of Vanderpool Electric Contractors violating the Scope Rule of the current Agreement, as amended, when they removed poles, dusk to dawn lights, secondary wires, replaced wires with quadplex and reinstalled electrical service. Carrier file 15-1 (84-7) E."

OPINION OF BOARD: Before we are able to consider the merits of the Organization's Claim, we must first rule on Carrier's contention that this matter is barred under the parties' Time Limits Rule because the grievance was not filed within sixty (60) days of the first date of occurrence.

On June 10, 1983, Carrier entered into a contract with Thamer Construction, Inc., for certain capital improvements at its yard facilities at Dante, Virginia. A substantial portion of this contract (about 8 % of the total cost) involved electrical work. On August 8, 1983, Thamer employees started work on the project. On that day, they removed utility poles, worked on yard lights, and moved some electrical lines. The Organization alleges this work was work included within its Scope Rule and performed by Signalmen since 1950. On August 9, 1983, the General Chairman discussed the matter with the Carrier's Director of Labor Relations. However, no written Claim was filed or processed at the time.

In October 1983, additional electrical work, alleged to be Signalmen's work, was performed by subcontractors of Thamer. Again, no written Claim was progressed by the Organization.

In November 1983, subcontractors of Thamer set five utility poles, hung transformers, and transferred lines and lights, and put in service new light towers. On December 5, 1983, a Claim was filed contending these tasks, completed on November 5, 6, and 10, 1983, while only seeking compensation for the alleged violations occurring in November, referenced the original incident occurring on August 8, 1983.

When this matter was appealed to Carrier's Labor Relations Department, it was denied on its merits and also on the basis that the Claim was untimely filed. Article V, Section 1(a) of the parties' Agreement provides in pertinent part:

"All claims or grievances must be presented in writing . . . to the officer of the Carrier authorized to receive same within 60 days from the date of occurrence on which the claim or grievance is based."

The "occurrence" on which this Claim is based is the first date that employees of Thamer, or its subcontractors, commenced work alleged to be Signalmen's work under the June 10, 1983, construction contract.

All of the work involved, whether it occurred in August, October or November, was but one facet of a major capital improvement project included within a single construction contract. We have held in our Awards, as SBA 570 has held in its decisions, that, when considering disputes on the assignment of work connected with a major capital improvement project, such as the new construction here involved, the project is to be considered as a whole and may not be subdivided into segments to determine whether or not some of the tasks could be performed by employees of the Carrier. The proscription against subdividing the project into segments seems to be appropriate when the timeliness of grievances on the use of employees of the contractor in the performance of work alleged to be Signalmen's work is under review.

In this regard, attention is invited to Third Division Award 21376 involving a dispute wherein janitorial work was turned over to an outside contractor. The contracting out occurred on September 1, 1969. Janitor work was, thereafter, performed by the contractor on a daily basis. In September 1973, a "continuing claim" was filed contending that this was a violation of the Agreement. In holding that the Claim had not been filed within sixty (60) days of the date of occurrence, the Board stated:

"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."

In this case, we too, have no choice but to dismiss the Claim as being untimely filed.

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 Employee involved in this dispute are respectively Carrier and Employee 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

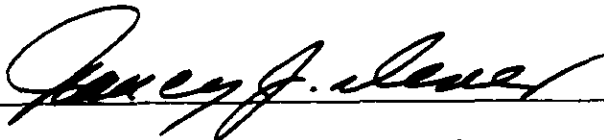
That the Claim is barred.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: _____



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of November 1987.