

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29523
Docket No. CL-29566
93-3-90-3-523

The Third Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

PARTIES TO DISPUTE: (Transportation-Communications
(International Union
(
(CSX Transportation, Inc. (former
(Louisville and Nashville Railroad Company)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood (GL-10511) that:

1. Carrier violated the Clerical Agreement at Peterman, Alabama when it permitted employees of Georgia Pacific Corporation to perform duties formerly performed by Clerks operating out of Flomaton, Alabama.
2. As a result of the above violation, the Carrier shall be required to compensate the Senior Available Employee, extra in preference, one (1) day's pay at the rate of the Assistant Transportation Service Agent at Flomaton, Alabama, a total of \$121.00 per day. This claim to begin sixty (60) days prior to the date claim was submitted and shall be on a continuous basis until claim is settled and the work is returned to Clerks covered by the Agreement between the Carrier and Transportation Communications Union."

FINDINGS:

The Third 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 employees 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 waived right of appearance at hearing thereon.

On November 17, 1988, the Carrier entered into a Power of Attorney with Georgia Pacific Corporation at Peterman, Alabama, whereby Georgia Pacific Corporation could sign its bills of lading and, pursuant to the Contract, these bills would be deemed to have been signed by a Carrier Agent. On the same day, the Carrier advised the Mobile Agent headquartered at Flomaton, Alabama, to discontinue going to the Georgia Pacific Corporation to sign Georgia Pacific bills of lading. Prior to this date, the Mobile Agent, and before him, the Peterman Agent, made daily trips to the Georgia Pacific facility to sign bills of lading.

On January 31, 1989, the Organization initiated what it characterized as a continuing claim alleging that the Carrier violated the Scope Rule when it permitted employees of Georgia Pacific Corporation to sign bills of lading. The claim sought compensation for each day beginning sixty days prior to January 31, 1989.

Unlike Award 29524, we must dismiss this Claim because the Claim was not filed within sixty days after November 17, 1988, the date the Carrier allegedly removed work from the scope of the Clerical Agreement. The Organization submits that the Carrier is engaging in a continuing violation and thus, it could initiate a claim at any time so long as the Organization did not seek any relief prior to sixty days before the claim was filed. However, while this Claim may manifest some attributes of a continuing claim, there was a fixed date on which the Carrier allegedly transferred work from employees covered by the Agreement to outsiders. There was only one alleged transfer or "farming out" of what the Organization contended is scope-covered work. (Third Division Award 26328). When there is a fixed date on which the Carrier takes certain action, alleged to be a violation of the Agreement, then the dispute occurred on a specific date and the claim must be initiated within sixty days. (Third Division Awards 27327, 26689; and 26328). The date of occurrence was November 17, 1988.

Therefore, the Claim herein should have been filed within sixty days of November 17, 1988. Inasmuch as the January 31, 1989 Claim was filed more than sixty days past November 17, 1988, we must dismiss the Claim.

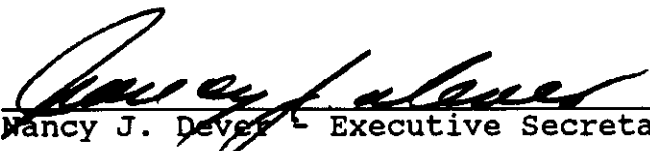
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A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 3rd day of February 1993.