

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31666
Docket No. MW-31214
96-3-93-3-200**

The Third Division consisted of the regular members and in addition Referee Robert Richter when award was rendered.

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(SOO Line Railroad Company**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned other than Track Subdepartment forces (Volkman Railroad Builders) to perform Track Subdepartment work (construct approximately four thousand two-hundred feet of trackage) along the Carrier's mainline at Leaf River, Illinois on August 5, 6, 7, 8, 9, 12, 13, 14, 15, 16, 19, 20, 21, 22, 23, 26, 27 and 28, 1991 (System File C-21-91-C090-09/8-00074 CMP).
- (2) The Agreement was further violated when Carrier failed to furnish the General Chairman with advance written notice of its intention to contract out the work mentioned in Part (1) as required by Rule 1.
- (3) The claim* as presented by General Chairman M.S. Wimmer on January 20, 1992 to Vice President-Labor Relations C.S. Frankenberg shall be allowed because said claim was not disallowed by Vice President-Labor Relations C.S. Frankenberg within the required sixty (60) day time limit set forth in Rule 47.
- (4) As a consequence of the violations referred to in Parts (1), (2) and/or (3) above, Messrs. S.P. Thomas, E. Valladares, D.R. Hartman and S.M. Smith shall each be compensated one hundred forty-four (144) hours' pay at their respective straight time rates of pay for the time worked by the outside forces on the dates listed above."

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 employee 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.

The Carrier had leased property to Rail Rock Incorporated at Leaf River, Illinois. Rail Rock contracted with Volkman Railroad Builders to build an industrial spur track.

On September 30, 1991, the Organization filed a claim based on Volkman performing work belonging to Soo Line employees. On November 25, 1991, the Carrier's Division Manager declined the claim. The General Chairman alleges the declination was not received until December 2, 1991.

On January 20, 1992, the claim was appealed to the Carrier's Vice President of Labor Relations claiming a time limit violation as well as a violation of the Agreement for allegedly contracting out its work.

It has advanced the time limit argument to this Board. Rule 47 of the Argument reads as follows:

"RULE 47

TIME LIMIT - CLAIMS OR GRIEVANCES

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

- (a) All claims or grievances must be presented in writing by or on behalf of the employee 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.

Should any such claim or grievance be disallowed, the Carrier shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employee or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances."

The Carrier argues that the Division Manager's declination was timely. The record is clear that the declination was within 60 days from the date the claim as filed. The Agreement does not require that the declination be received within 60 days. The time limit was not violated.

As to the merits of the case, the Organization has not presented any evidence that the Carrier contracted out any work. In fact, the Carrier has presented evidence that Rail Rock reimbursed the Carrier for expenses it incurred connecting the industrial track to the main line.

The Organization has the burden to prove the Agreement has been violated. It has failed to meet its burden. The Carrier has shown that industries have historically installed their own tracks.

AWARD

Claim denied.

ORDER

The Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

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

Dated at Chicago, Illinois, this 29th day of August 1996.