

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 34051
Docket No. MW-32482
00-3-95-3-282**

The Third Division consisted of the regular members and in addition Referee Robert M. O'Brien when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Soo Line Railroad Company)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it assigned an outside concern (Woodman Construction) to perform the routine B&B maintenance work of removing existing swing doors and installing overhead doors and related construction and repair work at the Roundhouse in Three River Falls, Minnesota on November 15, 16, 17, 18, 19, 22, 23, 24, 29, December 1, 2, 3, 6, 7, 8 and 9, 1993 (System File R744/8-00159).**
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with advance written notice of its intention to contract out said work as required by Rule 1.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Foreman K. K. Walberg, Assistant Foreman L. J. Samson, Carpenter T. Myers, Truck Operator M. Abercrombie and B&B Relief Worker P. Storhaug shall each receive one hundred thirty-six (136) hours' pay at their respective straight time rates and all overtime, vacation and fringe benefits lost."**

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 were given due notice of hearing thereon.

On January 18, 1993, the Carrier received a claim on behalf of employee holding seniority in the Bridge & Building (B&B) Subdepartment. The claim alleged that between November 15 and December 9, 1992, an outside contractor performed B&B Subdepartment work, namely removing swing doors on the Roundhouse at Thief River Falls, Minnesota, and replacing them with roll-up overhead doors.

It was the Organization's position that the Claimants were qualified to perform this work and had customarily, historically and traditionally replaced and installed Roundhouse doors in the past. Therefore, the Organization requested that each Claimant be compensated 136 hours' pay for being denied the opportunity to perform work that should have been assigned to them rather than to an outside contractor.

The claim was denied by the Carrier and appealed in accordance with the applicable Schedule Agreement. On April 28, 1994 and again on March 9, 1995, after the claim was discussed in conference, the Carrier's Vice President for Labor Relations argued, among other things, that the claim had not been timely filed initially.

On this property, claims must be submitted within 60 days or else they are barred. The Organization's claim alleges that commencing on November 15, 1992, the Carrier impermissibly contracted out B&B Subdepartment work. Thus, a claim had to be submitted by January 14, 1993, to be timely. The Carrier received the claim on January 18, 1993, beyond the 60-day time limit.

The Organization maintains that the claim was sent by certified mail on January 11, 1993. However, the return receipt was discarded because the Carrier did not assert a time limit violation when the claim was originally denied.

The Board has held that a time limit violation may be raised at any time during handling of a claim on the property. This defense does not have to be made at the initial step of claim handling. Therefore, the Carrier's Vice President of Labor Relations had the right to argue that the claim was untimely filed on January 18, 1993, at the initial step.

The Organization failed to demonstrate that the claim was filed by January 14, 1993, when the 60-day time limit expired. Accordingly, it is barred without addressing the merits of the claim.

AWARD

Claim dismissed.

ORDER

This 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 25th day of May, 2000.