

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 34143
Docket No. MW-34882
00-3-98-3-596**

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

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Burlington Northern and Santa Fe Railway Company
(former St. Louis-San Francisco Railway Company)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned outside forces (Gilbert Construction Company) to perform Bridge and Building Subdepartment work [constructed two (2) bridges on line segment 1047] at Mile Post 556.9A and Mile Post 557.9A on the Avarad Sub, Oklahoma Division beginning July 8, 1996 and continuing (System File B-2629-1/MWC 96-11-04AD SLF).**
- (2) As a consequence of the violation referred to in Part (1) above, the Claimants* listed below shall each be compensated at their respective rates of pay for an equal proportionate share of the total man-hours expended by the outside forces in the performance of the work in question.**

M. Nehring	J. B. Johnson
A. Fields	M. Cole
D. Rollins	J. Pyle
A. Birchfield	B. Wilson
K. Monden	W. C. Rogers
R. Haskins	F. W. Mears
F. Bowman”	

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.

Before examining the merits or lack thereof of the claim here concerned, the Carrier has raised a procedural issue contending that the claim was not presented to the Carrier officer authorized to receive a claim in this instance within 60 days of the date the alleged violation commenced.

Before the Board, for the first time, the Organization advances two arguments as to why the claim was timely, thus the decision must be on the merits and not the procedural. One argument being that because the first Carrier officer to whom the claim was presented did not raise the issue of the untimely filed claim, the Carrier thus abandoned the right to raise that defense and, secondly, the original claim dated September 5, 1996, indicated in the heading that the claim was sent "via facsimile and U. S. Mail" thus the facsimile was presented on September 5, 1996.

The Board rejects both arguments. The procedural issue was raised by the Carrier when responding to the claim appealed to the highest designated official. Thus, the procedural issue was raised on the property and reiterated before the Board. The procedural argument was not abandoned.

Secondly, when the Carrier raised the late filing issue, the Organization never rebutted the Carrier's argument. The Organization should have raised the facsimile issue and should have advanced the abandonment argument on the property, but they did not.

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The claim was not presented until September 9, 1996, seeking redress for an alleged violation that commenced July 8, 1996. The claim has not been handled timely and is before the Board improperly.

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 19th day of June, 2000.