

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 35965
Docket No. MW-33421
02-3-96-3-784

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Union Pacific Railroad Company (former Chicago &
(North Western Transportation Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned outside forces (Rossi Construction) to clean up paper on both sides of the track at Mile Post 9.7 on the New Line Subdivision on April 18, 1995, instead of assigning its Maintenance of Way forces to perform said work (System File 9KB-6180T/950399 CNW).**
- (2) The Agreement was further violated when the Carrier failed and refused to furnish the General Chairman with advance written notice of its intent to contract out said work as required by Rule 1(b).**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Messrs. J. Nudera, J. Saathoff, L. Bailey, I. F. Gil, M. Martinez, M. Secco and B. Arellano shall each be allowed eight (8) hours' pay at their respective time and one-half rates.”**

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.

Claimants J. Nudera and J. Saathoff hold seniority as Track Foremen; Claimants L. Bailey and I. F. Gil hold seniority as Assistant Foreman Truck Drivers; Claimants M. Martinez, assigned as a Rubber Tired Loader Operator, and M. Secco, assigned as a Crane Operator, hold seniority as Machine Operators; Claimant B. Arellano holds seniority as a Trackman. Each of these Claimants was regularly assigned to a position in their respective class in mid-April 1995 when the claim arose.

On April 17, 1995, a box car load of computer paper caught fire at Mile Post 9.7 on the New Line Subdivision in the middle of the City of Des Plaines, Illinois. In fighting the blaze, the Des Plaines Fire Department was forced to unload half the car, and the computer paper was all over the ground on both sides of the tracks. It was determined that the paper could stay in place overnight, but it had to be cleaned up the next morning to prevent the paper from being blown all over the City of Des Plaines. The Claimants were all currently assigned to perform other duties. The Carrier, declaring the situation an "emergency," retained an outside contractor to do the paper clean up without notice to or discussion with the BMW General Chairman.

On May 2, 1995, a claim was submitted alleging that the use of Rossi Construction in this instance was a violation of Rule 1 - Scope of the controlling Agreement. The initial claim alleged that "[t]here were no special skills, special equipment or special material used in the project." The claim also relied on the portion of the Scope Rule pertaining to 15-day advance notice requirements. The Carrier denied the claim, asserting that because "this was an emergency condition, no notice was required and the work could be performed by a contractor." The claim was appealed by letter dated August 8, 1995, and denied by the Carrier's highest designated officer, by letter dated September 6, 1995. More than ten months later, by letter dated July 12, 1996, the General Chairman requested the Carrier to grant a "blanket extension of time limits for docketing with the NRAB [by] September 27, 1996," 11 different listed claims,

including the instant claim. The Carrier responded that it would conditionally concur with that request to extend the time limits "as to all listed claims which are not currently past time limits." The Organization thereafter submitted the instant claim to the Third Division on September 24, 1996.

At the threshold of this case, the Carrier mounts a challenge that the claim is barred for lack of timely invocation of the Board's jurisdiction, pursuant to Rule 21(c) of the controlling Schedule Agreement, as follows:

"(c) The requirements outlined in paragraphs (a) and (b) pertaining to appeal by the employee and decision by the Company shall govern in appeals taken to each succeeding officer, except in cases of appeal from the decision of the highest officer designated by the Company to handle such disputes. All claims or grievances involved in a decision by the highest designated officer shall be barred unless, within (9) months from the date of said officer's decision, proceedings are instituted by the employee or his duly authorized representative before the appropriate division of the National Railroad Adjustment Board or a System, Group or Regional Board of Adjustment that has been agreed to by the parties hereto as provided in Section 3 of the Railway Labor Act. It is understood, however, that the parties may by agreement in any particular case extend the nine (9) month period herein referred to." (Emphasis added)

We are persuaded that the Carrier's procedural arbitrability objection is well-founded. This claim was already dead under the nine-month time limit of Rule 21(c) on July 12, 1996 when the General Chairman asked the Carrier to extend the time limits for this and several other claims. The net effect of the Carrier's response that it would grant the General Chairman's request "as to those listed claims which were not [as of July 12, 1996] currently past the time limits," was to extend the time limits for other listed claims but declined to waive the time limit violation that had already occurred in this particular case.

Based on the foregoing this claim must be dismissed for failure to handle the claim in the usual manner as set forth in Section 3, First (i) of the Railway Labor Act. See Third Division Awards 27502, 23566 and 23548.

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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 8th day of March, 2002.