

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37364
Docket No. MW-36551
05-3-01-3-35

The Third Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Union Pacific Railroad Company (former Southern
(Pacific Transportation Company [Western Lines])

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned outside forces (Radian International) to perform Water Service Sub-department work (install concrete drain pipe and catch basins) northeast of the diesel ramp in the Roseville Yard at Roseville, California beginning on September 20, 1999 and continuing through October 20, 1999 instead of Water Service Sub-department employees K. A. Yoder, J. C. Karl and J. R. Rhea (Carrier's File 1217568 SPW).
- (2) The Agreement was further violated when the Carrier failed to provide the General Chairman with proper advance written notice of its intent to contract out the work referenced in Part (1) above or make a good-faith effort to reduce the incidence of subcontracting and increase the use of Maintenance of Way forces in accordance with Article IV of the May 17, 1968 National Agreement and the December 11, 1981 Letter of Understanding.
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants K. A. Yoder, J. C. Karl and J. R. Rhea shall now ‘. . . each be paid their proportionate share of

the five hundred fifty-two (552) man hours worked by the herein named outside contractor. Payment shall be at their respective rate of pay.”

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.

The Carrier raised a threshold procedural issue which it argues is dispositive of the claim. Specifically, it maintains that the initial claim regarding the above dispute was written on November 29, 1999, postmarked on the following date, but alleged a contracting violation beginning on September 20, 1999. It contends that, during the on-property handling of the claim, it argued against its timeliness under Rule 44(a) of the Agreement. Thus, the Carrier urges the Board to dismiss the claim given the procedural error discussed here.

In response, the Organization contends that, as it also argued on the property, the parties had a “long standing practice” of granting time limit extensions with respect to initial claim submissions. It asserts that such was the case at the time the claim was filed; therefore, the claim must be considered timely and addressed by the Board on the merits.

The Board carefully reviewed the entire record with regard to the Carrier’s threshold procedural argument and the Organization’s contentions to the contrary. In short, we find no evidence to substantiate the assertion that the parties had

entered into an agreement to extend the time limit at the first step of claim submission. Rule 44(a) states, in pertinent part:

“... 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...”

The Board finds from its review of the record that, according to the Organization's original claim, the incident arose on September 20 and continued through October 20, 1999. Given the 60-day Rule for claim submission, quoted above, the claim dated November 29 and postmarked November 30, 1999, was clearly out of time. Thus, based on the record before us, the Board is precluded from reaching any conclusions with regard to the merits. The claim must be dismissed. See Third Division Awards 28918 and 30267, among others.

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 24th day of February 2005.