

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37646
Docket No. MW-36605
05-3-01-3-95

The Third Division consisted of the regular members and in addition Referee Steven M. Bierig 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 (Foundation Constructors Inc.) to perform System Work Equipment Sub-department work (operate crane to drive pile and set the bridge) at Mile Post 139.87 on the Valley Subdivision beginning on October 18, 1999 and continuing through December 6, 1999 instead of Mr. T. L. Kelly (Carrier's File 1221567 SPW).**
- (2) The Agreement was further violated when the Carrier failed to provide the General Chairman with a 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, Claimant T. L. Kelly shall now be compensated for two hundred and thirty (230) hours' pay at**

his respective straight time rate of pay and for sixty-four (64) hours' pay at his respective time and one-half 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.

Beginning on October 18 and continuing through December 6, 1999, the Carrier allegedly assigned Foundation Constructors, Inc. to perform System Work Equipment Sub-department work. According to the Organization, during that time, an employee of Foundation Constructors, Inc. expended 230 straight time and 64 overtime hours.

On December 23, 1999, the Organization submitted a claim alleging that the Claimant was entitled to compensation at the straight time rate of pay for 230 hours, and at the overtime rate of pay for 64 hours.

Rule 44 (a) of the Agreement requires any claim to be presented in writing "within 60 days from the date of the occurrence on which the claim or grievance is based." In the instant case, the initial claim was dated December 23, 1999. The work commenced on October 18, 1999. As such, the claim was filed beyond the 60-day time limit set forth in Rule 44 (a). See Third Division Awards 37364, 28918, 25538, 23953 and 18667.

Because the claim was filed in an untimely fashion, it must be dismissed.

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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 7th day of December 2005.