

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40846
Docket No. SG-40871
11-3-NRAB-00003-090135**

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad:

Claim on behalf of J. B. Bryson, K. N. Delfs, K. S. DeSousa, P. B. Hall, and S. G. Thurmond, for 8 hours each at their respective straight time rates of pay, account Carrier violated the current Signalmen’s Agreement, particularly the Scope Rule and Rule 4, when on April 17, 2007, it allowed employees not covered by the Signalmen’s Agreement to perform the Scope-covered work of installing conduit/pipe for a Hot Box Detector at MP-541.2 and denied the Claimants of the opportunity to perform this work. Carrier compounded this violation by failing to respond to the Organization’s initial claim within the time limit provisions of Rule 69. General Chairman’s File No. UPGCW-4-1472. BRS File Case No. 14148-UP.”

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 Claimants were assigned to the Carrier's Boring Gang on Zone 4. This case raises the procedural issue of whether the claim was timely filed and/or timely disallowed under Rule 69 - CLAIMS AND GRIEVANCES, which provides, in pertinent part:

"All claims or grievances must be presented in writing by or on behalf of the employee involved, to the office of the Carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based. Should any such claim be disallowed, the Carrier will, within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employee or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance will be allowed as presented. . . ."

On the merits, the claim asserts that the Claimants were denied the right to perform the scope-covered work of directional boring when the Carrier improperly assigned it to an outside contractor.

The record reveals that the claim was filed by Local Chairman Reynolds on July 21 concerning work performed on April 17, 2007. It asserts that there were some conversations in the interim concerning whether there was a "Special Agreement" in place covering this work, and its discovery that there was no such agreement in a conversation on July 17, 2007. The Carrier's record contains a September 11, 2007, denial, addressed to Reynolds, which raises the fact that the claim was untimely filed, and the assertion that boring for the installation of conduit for Electrical and Communication is not scope-covered or solely reserved to Signalmen by either agreement or practice. The Organization's record does not contain a copy of this denial, but does present a January 4, 2008, appeal stating that the claim should be allowed as presented because no denial was ever received. The Carrier has no record of ever receiving an appeal in this case. The Organization

submitted a letter dated August 26 confirming a claims conference on July 29, 2008, and appealing the decision to deny the claim. Carrier's file contains a letter of October 20, 2008, denying that a proper conference was held, and reaffirming that it received no appeal from its September 11, 2007, denial in this case.

The Organization argues that the claim was never timely denied and must be allowed as presented under the clear language of Rule 69, citing Third Division Awards 30876, 33604; Second Division Awards 11927 and 12346. With respect to the merits, it maintains that the work of installing pipe for a hot box detector is scope-covered under paragraphs 8 and 12 of the Scope Rule, as well as Rule 4 concerning the use of earth boring machines, and that the Carrier violated the Agreement when it contracted out the disputed work whose purpose involved the signal system, relying on Third Division Awards 19525, 20540 and 30108.

The Carrier contends that because the Organization's claim was initiated 120 days after the alleged occurrence on April 17 and received by the Carrier on July 26, 2007, it was untimely filed under Rule 69 and should be dismissed. It also notes that it properly and timely denied the claim raising this issue, never received an appeal, and brought this fact to the Organization's attention prior to the alleged conference, thereafter, providing it copies of such correspondence. The Carrier asserts that, at best, there is an irreconcilable dispute of material fact, and that the Organization failed to meet its burden of proof also requiring dismissal, citing Third Division Awards 30591, 33487 and 33895. With respect to the merits, the Carrier argues that precedent confirms that boring is not covered by the Scope Rule, and there was no showing that it has been exclusively performed by Signal Department employees, relying on Third Division Awards 21132, 24538, 26711 and 39468.

A careful review of the record convinces the Board that the claim must be dismissed on procedural grounds without reaching the merits of the dispute. The claim was filed on July 17 and protests an incidence of contracting occurring on April 17, 2007. It is clear that the claim was presented more than "60 days from the date of the occurrence on which the claim or grievance is based," a requirement of the clear language of Rule 69. As noted by the Organization, and the cases relied upon in support of its argument concerning the untimely declination of the claim, the 60-day time limit is clear and unambiguous, places a burden on both parties, and allows the Board no latitude with respect to its enforcement. See, Third

Division Award 30876 and Second Division Award 12346. The vague assertion that there were some discussions between April 17 and July 17, 2007, concerning whether a “Special Agreement” was entered into, permitting the contracting, does not toll the agreed period for presentation of the claim in this case.

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 11th day of January 2011.