

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21376
Docket Number CL-21287

Dana E. Eischen, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(Chicago and Eastern Illinois Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood,
GL-7889, that:

1. Carrier violated the Clerks' Agreement when it contracted with persons not covered by the Agreement to perform its janitorial work at its 26th Street Yard Office and Yard Center Office - such action being in violation of Rules 1, 2, 5, and 80 of the Agreement. (Carrier's file M 210-48)

2. Carrier shall now be required to compensate Claimants as outlined below:

(a) Clerk C. W. Keilman, 26th Street Yard Office, for three hours' pay at the pro rata rate beginning September 21, 1973 and continuing seven days per week until violation is corrected.

(b) Clerk L. W. Schmidt, Yard Center, for eight hours' pay at pro rata rate beginning September 21, 1973 and continuing five days per week, until violation is corrected.

(c) Clerk W. E. Burns, Yard Center, for eight hours' pay at pro rata rate beginning September 21, 1973 and continuing seven days per week until violation is corrected.

(d) Clerk O. V. Cochran, Yard Center, for eight hours' pay at pro rata rate beginning September 21, 1973 and continuing five days per week until violation is corrected.

(e) Clerk R. K. Ingle, Yard Center, for eight hours' pay at pro rata rate beginning September 21, 1973 and continuing seven days per week until violation is corrected.

(f) Clerk C. S. Rolder, Yard Center, for eight hours' pay at pro rata rate beginning September 21, 1973 and continuing seven days per week until violation is corrected.

(g) Clerk A. G. Schnoor, Yard Center, for eight hours' pay at pro rata rate beginning September 21, 1973 and continuing seven days per week until violation is corrected.

(h) Clerk W. Phelps, Yard Center, for eight hours' pay at pro rata rate beginning September 21, 1973 and continuing seven days per week until violation is corrected.

3. Claim is to include any successor(s) to those Claimants named; which, of course, can easily be determined through a joint check of the payroll records because the positions occupied by Claimants are all identified by title and job number.

OPINION OF BOARD: We are met at the threshold of this case by the procedural/jurisdictional question whether the claim herein is time-barred by the 60-day rule of Article V (1) of the National Agreement of August 21, 1954. Careful analysis of the overall record convinces us that it is so barred.

The claim, filed September 21, 1973, alleges a violation of the Scope Rule when Carrier contracted out janitorial work at two of its facilities in Chicago: the 26th Street Yard Office and the Yard Center Office. The facts are not disputed on the record. By Agreement executed on September 1, 1969 Carrier contracted for the performance of janitorial service at the Yard Center Office by Ward's Janitorial Service. Since that time Ward's has performed all such service at Yard Center Office. On March 9, 1971 Carrier contracted with one Fred Sparks to perform janitorial service at 26th Street Yard Office. Since that date Sparks has performed the janitorial work at that location. The instant claims were initiated by a September 21, 1973 letter from the Organization's General Chairman who informed Carrier that "on a recent trip the undersigned discovered that janitor work required by the Carrier is being performed by Carrier employees not covered by the Clerks' Agreement and by persons who are not even employees of the Carrier" The claims were denied by Carrier on several grounds, including lack of timeliness under the Time Limit Rule. The Organization counters that this is a "continuing claim" and therefore was timely filed on September 21, 1973.

The principles governing determinations of continuing violations have been enunciated carefully in prior Awards of this Division. See Awards 11167, 14450, 15134, 19341 et al. Both parties cite other Awards in support of their positions herein, all of which we have reviewed with care. Of the two Awards cited by the Organization, Award 10379 clearly is distinguishable on the facts and Award 18627 is unintelligible. One of our other Awards, however, appears to us directly on point with the instant case:

"Thus, the initial question to be decided by the Board is whether the claim is a continuing one. It is not disputed that a contract was let on July 2, 1968, for the work in question, and that the claim was not filed until April 3, 1969.

"While the Organization contends that transactions with the outside contractor occurred on dates subsequent to July 2, 1968, the record does not support that contention. The facts of record show that the contract was let on that date. Of course, work under it continued for some time. However, the decisions of the Board (for example, see Awards Nos. 14368, 15691 and 16161), support the view that Carrier's alleged violation occurred on the named date and that without probative evidence to the contrary, the time limits for filing the claim began to run on that date.

Since the claim was not filed within the time limits provided in the Agreement it must be dismissed."

Review of the factual record before us shows the alleged violation forming the gravamen of this claim was the contracting out of janitorial services. The contracting out occurred on September 1, 1969 and March 9, 1971. The claim was not filed until several years later in September 1973. These are not "continuing violations" or "continuing claims" as those terms have been established by Board precedent. We have no choice but to dismiss the claim as time-barred without reaching the merits.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Claim is time-barred.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 28th day of January 1977.