

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23953
Docket Number MW-24010

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employees
{ The Denver and Rio Grande Western Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it assigned car cleaning and conditioning work in the Craig, Colorado area to outside forces (System File D-57-79/MW-20-80).

(2) The Carrier also violated Article IV of the May 17, 1968 National Agreement when it did not give the General Chairman advance written notice of its intention to contract said work.

(3) As a consequence of the aforesaid violations, Section Foreman A. M. Manzanares and Section Laborers P. Cruz, F. Herrera, J. Archuleta, V. Alfaro and P. Ramirez each be allowed pay at their respective rates for an equal proportionate share of the total number of man-hours expended by outside forces beginning sixty (60) days retroactive from December 12, 1979."

OPINION OF BOARD: This dispute is based on the contracting out of certain car cleaning and conditioning work in the Craig, Colorado area. The actual start of work by the contractor took place on August 24, 1979. The Organization filed the original claim on December 12, 1979. As a threshold issue, Carrier contends that the Claim is untimely and should be dismissed. Carrier relies on the provisions of Rule 29(a) which provide in pertinent part as follows:

Rule 29(a)

"All claims or grievances must be presented in writing by or on behalf of the employee involved to the officer of the Company authorized to receive same within sixty (60) days from the date of the occurrence on which the claim or grievance is based. Should any such claim or grievance be disallowed, the Company shall within sixty (60) calendar 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 shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the Company as to other similar claims or grievances."

Petitioner argues that the Claim herein is a continuing claim since the work in question was being performed by an outside concern both prior to and subsequent to the filing of the Claim. Hence, it is argued, the claim is subject to Rule 29(d) governing continuing violations. Carrier, on the contrary, maintains that the Claim is not a continuing claim because it was based on a single occurrence, Carrier's alleged failure to give advance written notice of its intention to contract the work in question.

The Board notes that the question of the nature of the infraction (continuing or not) is far from novel. In the leading award, long relied upon, Referee Ives defined the distinction between a continuing and a non-continuing claim; he stated in Award 14450:

"Recent awards of this Board have held that the essential distinction between a continuing claim and a non-continuing claim is whether the alleged violation in dispute is repeated on more than one occasion or is a separate and definitive action which occurs on a particular date."

In the case at bar, it is apparent that the action complained of, the lack of notice of intent to contract and the actual contracting of the work, took place in August of 1979 while the claim was not filed until December, long past the sixty days provided in Rule 29(a). Clearly, the Claim is not a continuing Claim under the well reasoned definition cited above, and followed by many other awards, and it must be barred.

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 barred.

A W A R D

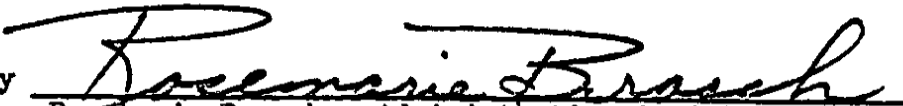
Claim dismissed.

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By Order of Third Division

ATTEST: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 30th day of July 1982.