

Form 1

THIRD DIVISION

Award No. 29593

Docket No. MW-27964

93-3-87-3-504

The Third Division consisted of the regular members and in addition Referee Gilbert Vernon when award was rendered.

(Brotherhood of Maintenance
(of Way Employes

PARTIES TO DISPUTE:

(Northeast Illinois Railroad Corporation

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when outside forces were used to construct yard tracks at Joliet, Illinois beginning October 1, 1985 (System Files NIRCRC-0-518 and NIRCRC-M-20A).

(2) Because of the aforesaid violation, the senior Maintenance of Way employees listed on the Northeast Illinois Regional Commuter Railroad Corporation's Seniority Roster (one track foreman, one assistant track foreman, twelve track laborers, three machine operators, one welder and one assistant welder) shall each be allowed eight (8) hours of pay for each regular work day, and all overtime hours, beginning sixty (60) days retroactive from February 20, 1986."

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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 waived right of appearance at hearing thereon.

This dispute claims the Carrier violated the Agreement when it contracted out bargaining unit work. In defense, the Carrier raises two threshold issues which challenge the validity, ab initio, of the Claim. First, Carrier says the Claim is invalid for lack of sufficient specific information. Second, Carrier argues the Claim was not filed within the 60 day time limit mandated by the Agreement.

We confine our analysis of this dispute, as we must, to those matters which were raised by the parties in the record they developed on the property. Additional assertions and arguments raised for the first time in the parties' ex parte Submissions have not been considered.

We reject Carrier's contention that the Claim lacked sufficient information. Even a casual review of the record reveals that the Carrier had no difficulty pinpointing the disputed work project involved or the nature of the issues.

Carrier's time limits defense is another matter. Distilled to its essence, the Organization contends that the contractor's work constituted a continuing violation of the Agreement for which a Claim might be filed within 60 days of any work by the contractor. It cites prior decisions of this Board in support. The Carrier's view is opposite, and it also cites prior decisions in support of its position.

While there is diversity of thought on the issue, we are persuaded the better view is that contracting transactions are usually specific singular events in time. The violation occurs, therefore, depending on the circumstances of the case, when the contract is either awarded or work is begun. Each day of work by the contractor thereafter does not constitute a new violation of the Agreement. This matter fits that set of circumstances. As such, the 60 day time limit, according to the record, commenced running as early as October 8, 1984, as the Carrier contends, and, taking the date most favorable to the Organization, no later than October 1, 1985. The Claim was not filed until February 20, 1986.

The Organization asserts that it had no knowledge of the violation prior to the Claim date. The Organization provided no evidence in support of its assertion. On the record before us, we do not find the Organization's assertion to be persuasive.

Since it was not filed timely in accordance with the parties' Agreement, the Claim is found to be invalid and must be dismissed. As a result, we do not reach the substantive merits of the dispute.

Form 1
Page 3

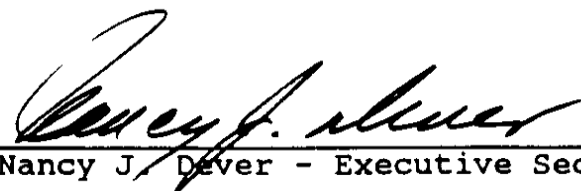
Award No. 29593
Docket No. MW-27964
93-3-87-3-504

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of March 1993.