

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36605
Docket No. MW-34137
03-3-97-3-681**

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: (
(Brotherhood of Maintenance of Way Employes
(Burlington Northern Santa Fe Railway Company
((former St. Louis – San Francisco Railway Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- 1. The Agreement was violated when the Carrier assigned outside forces (Rob Norris) to perform Maintenance of Way work (clear brush and trees from the right of way) on the Pensacola Sub beginning April 29, 1996 and continuing (System File B-2506-2/MWC 960719AA SLF).**
- 2. The Agreement was further violated when the Carrier failed to furnish the General Chairman with advance written notice of its intention to contract out said work as required by Rule 99.**
- 3. As a consequence of the violations referred to in Parts (1) and/or (2)above, Messers. M. G. Roser, Sr. and B. G. Stanley “... and one additional senior employee each be paid at their respected rates of pay for all hours the contractor works from April 29, 1996 and for as long as the above continues.”**

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.

Rule 90(a)(1) provides in pertinent part that "[a]ll claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the Carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based." The claim in this matter is dated June 26, 1996 and alleges that commencing April 29, 1996, the Carrier improperly used outside forces. The claim was not received by the Carrier until July 1, 1996. The claim was therefore not received by the Carrier within 60 days from the date of the occurrence on which the claim is based. Between these parties under the language found in Rule 90(a)(1), the claim must therefore be dismissed as untimely. See Third Division Award 36285 (citing Public Law Board No. 3460, Award 18)."

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 29th day of July 2003.