Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 38246
Docket No. MW-37550
07-3-02-3-655

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(BNSF Railway Company (former Burlington Northern
(Railroad Company)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it assigned outside forces to perform Maintenance of Way and Structures Department work (all related work to the upgrade of the HVAC system) in the Division Office Building at Vancouver, Washington beginning October 2, 2000 and continuing instead of Mr. D. Woodward, S. Glenzer, J. Richard, T. Veazey, D. Brown, C. Munson, J. Kathrein and D. Hard (System File S-P-827-G/11-01-0097 BNR).

(2) The Agreement was further violated when the Carrier failed to provide the General Chairman with a proper notice of its intent to contract out the aforesaid work or make a good-faith effort to reduce the incidence of subcontracting and increase the use of its Maintenance of Way forces as required by Rule 55 and Appendix Y.

(3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants D. Woodward, S. Glenzer, J. Richard, T. Veazey, D. Brown, C. Munson, J. Kathrein and D. Hard shall now '...each be allowed an equal proportionate for the total number of hours the Contractors worked at the

straight time rate, and an equal proportion of the total number of overtime hours the Contractor worked at the overtime rate of one and one-half (1.5) times, at their current rate of pay."

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.

By letter of July 18, 2000, the Carrier sent the Organization a notice of intent to contract upgrading HVAC units in the Division Office Building (DOB) at Vancouver, Washington. Per the Organization's request, a conference regarding the work was held in August 2000. On October 2, 2000, and outside contractor began the removal and replacement of rooftop HVAC units at the DOB. The work was completed on or about December 20, 2000.

The Organization called the Carrier and asked for a time limit extension for filing the claim. The parties agreed to extend the time limit until December 31, 2000. The Organization filed a claim. While the claim letter was dated December 22, 2000, postmarks from the U.S. Postal Service and the "received" stamp applied by the Carrier indicate that the letter was mailed on January 3 and received by the Carrier on January 9, 2001 – nine days after the agreed-to extended time limit. In its claim letter, the Organization protested that the contracted work was properly the work of BMWE-represented employees, and that the work had previously been done by them at other Carrier sites.

In its denial of the Organization's claim on February 9, 2001, the Carrier asserted that the work at issue had not solely been the work of MOW personnel. It contended that the letter of intent clearly stated its position that the project was considered beyond the Scope of the Agreement, and that it did not violate the Agreement by contracting it out. The Carrier also protested the late filing of the claim, and noted that on the basis of its lack of timeliness, the claim should be withdrawn.

In its April 6, 2001 appeal the Organization insisted that the work at issue had customarily been done by BMWE-represented employees and, in fact, had been performed by them at the same site previously. The Organization did not respond to the Carrier's procedural defense. In the ensuing correspondence on the property, the Carrier again raised the matter of timeliness. In its final letter before conferencing on the property, the Organization reiterated that it had been granted an extension, and rejected the Carrier's contention that the claim was not filed within the contractual time limits.

The Board reviewed the record carefully, particularly with respect to the initial filing of the claim and subsequent correspondence. We find merit to the Carrier's position that the claim was not filed within the contractual time limits. Despite the date on the letter – December 22, 2000 – objective irrefutable evidence from the federal post mark indicates that it was not posted at least until January 3 and was most likely not actually received in the Carrier's offices until January 9, 2001. Because the Organization requested the extension of the time limits in the first place it was particularly obligated to meet the extended deadline on time. It did not do so. In Third Division Award 36285, the Board held:

> "A claim is formalized through several steps. It must be reduced to writing; it must be sent; it must be received. Placement of a written claim in a mail box is simply not tantamount to the claim being 'presented . . . to the officer of the Company authorized to receive same.'"

Accordingly, we need not reach, nor do we comment upon, the merits of this case. The claim is dismissed solely on the basis that it was not timely filed.

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 18th day of July 2007.