

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 38250
Docket No. MW-37626
07-3-02-3-732

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 Employees
(BNSF 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 to perform Maintenance of Way B&B Sub-Department work (building a fueling station) at Mile Post 714.4 Station Palos, West Jefferson, Alabama on the Memphis Division from May 1 through August 8, 2000 and continuing, instead of B&B employes B. Colburn, T. Faulkner, J. Seals, J. Franks, A. Ray and T. Vintson [System File B-820-4/12-00-0265(MW) SLF].**
- (2) The Agreement was further violated when the Carrier failed to provide the General Chairman with a proper advance notice of its intent to contract out said 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 99 and the December 11, 1981 Letter of Agreement.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants B. Colburn, T. Faulkner, J. Seals, J. Franks, A. Ray and T. Vintson shall now each be compensated at their respective straight time rates of pay for an equal share of all man-hours expended by the outside forces**

in the performance of the aforesaid work from May 1, 2000
and continuing.”

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.

The essential facts in this case are not in dispute. By letter of January 28, 2000, the Carrier notified the Organization of its intent to contract out the work of constructing a fueling facility at Palos, Alabama. Work on the facility was begun in April and completed in July 2000. The instant claim was filed on August 14, 2000. The Organization maintained that the Carrier had violated the Agreement by contracting out the work in question, and that it rightfully belonged to Bridge and Building Sub Department (B&B) employees. It cited the dates of the violation as May 1 through August 8, 2000. The claim was denied on September 7, 2000. The Organization appealed that denial on September 11, 2000. The appeal was again denied by letter of November 7, 2000. The claim was subsequently progressed including conference on the property after which it remained unresolved.

Although the Organization protested that it did not receive proper notice, the record indicates otherwise. Furthermore, the notice specifically alerted the Organization about the likely start time and anticipated completion time. While the start time was delayed, it cannot be argued that the Organization was somehow “blind sided” by the commencement of the project at issue.

In its November 7, 2000 denial of the Organization’s appeal, the Carrier contended that the claim had not been filed in a timely manner. It noted that Rule

90(a)(1) provides: "All claims or grievances must be presented in writing by or on behalf of the employe 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 Carrier pointed out that the claim alleged a violation of the Agreement beginning on May 1, but was not filed until August 14, 2000. Thus, the Carrier argued the claim is time barred. We agree.

The Agreement is clear and unambiguous. In addition, the Carrier's position is supported by arbitral history on this and other Boards. The standard concerning when the time to file a claim "begins to toll" invariably looks to when the claimant (in this case the Organization) "knew or should have known" of the violation. In this case, the Organization, for reasons not clear on the record, waited until long after it "knew or should have known" about the alleged violation. For an excellent discussion of this principle, see Third Division Award 36385 (Mittenthal). See also, Third Division Award 36605. Accordingly, the claim must be dismissed as untimely.

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.