

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 42401  
Docket No. SG-42450  
16-3-NRAB-00003-130388**

The Third Division consisted of the regular members and in addition Referee Patricia T. Bittel when award was rendered.

**PARTIES TO DISPUTE:** (Brotherhood of Railroad Signalmen  
(BNSF Railway Company)

**STATEMENT OF CLAIM:**

**“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the BNSF Railway Company:**

**Claim on behalf of the BNSF General Committee of the Brotherhood of Railroad Signalman (sic.), for Carrier to immediately “wind down” the UTU Agreement, account Carrier violated said Agreement, particularly Article 23.4, when it refused to “wind down” this Agreement following the National Mediation Board’s findings that the BNSF is a single system (including the Copper City Subdivision) and that the BRS is the representative of the craft or class of Signal employees on the entire system. General Chairman’s File No. 12-036-BNSF-87-B. BRS File Case No. 14901-BNSF.”**

**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.**

On March 11, 2003, Montana Western Railroad agreed to transfer its property, here referred to as the Copper City Subdivision, to BNSF. On June 23 of that year, the Surface Transportation Board granted BNSF's application for exemption subject to the New York Dock Conditions. In 2003, BNSF and UTU reached an agreement providing that the MWR/UTU Collective Bargaining Agreement (CBA) "is recognized as being binding . . . to cover the wages, rules and working conditions of the employees on the former Montana Western Railway properties that BNSF is acquiring." BNSF agreed to assume that CBA and take into its employ the employees of the former Montana Western who had been working under that CBA.

On August 2, 2004, BNSF and UTU updated and altered the CBA to reflect the new relationship. Section 23.4 was added, stating: "If there is a final, authoritative ruling that BNSF craft and class lines apply on the former Montana Western property, this agreement will be wound down in an orderly fashion."

On October 7, 2004, the BRS General Chairman notified BNSF that maintenance and construction work on the former MWR line would be assigned to BNSF-BRS Agreement covered employees. The UTU took the position that it represented the employees doing that work and would continue to do so.

The National Mediation Board (NMB) review followed with a decision dated April 8, 2005. Following established criteria for determining whether there has been substantial integration of operations following acquisition, the NMB determined that "BNSF and the Line are operating as a single transportation system." After reviewing ownership, coordination of train and car exchanges, trackage rights, handling of liability claims, coordination of line personnel with other BNSF employees, usage of BNSF equipment and tools, lines of management and supervision, application of BNSF policies, employee assignment and human resources, public image and uniforms, the NMB held as follows:

"Based upon the application of the principles cited above to the facts established by the investigation, the Board finds that BNSF and the Line operate as a single transportation system for representation purposes for the craft or class of Signalmen."

The Board went on to say: "Since BNSF voluntarily recognized the BRS as the representative of the craft or class of Signalmen, there is no certification for the Board to extend to cover the Signalmen on the Line."

BNSF interpreted this to mean that BRS would represent the contested employees, but would do so under the terms of the UTU Agreement. The Signalmen's General Chairman had a different view of things. In his assessment, the April 2005 NMB decision meant that the BRS Agreement covers the signalmen on the Copper City Subdivision Line.

A Section 11 Committee heard the case in August of 2013 under contested jurisdiction. BRS subsequently withdrew its claim regarding assignment of signal work, but continued to pursue its position that the UTU Agreement must be wound down. The claim was duly processed without resolution. As a result, the Organization presented the dispute to the Board for hearing and decision.

On November 6, 2013, the New York Dock Committee issued a decision declining jurisdiction, stating: "There is nothing to resolve, as the BNSF engaged in no action, contemplates none and the essence of the dispute with the BRS rests with the language of a single CBA of which this committee lacks jurisdiction."

BNSF maintains Montana Western properties were never integrated into BNSF. In its view, the BRS Agreement could not cover the contested employees because of this. It claims it recognized and assumed the existing collective bargaining agreement as binding. It argues that, "nothing in either the BNSF – BRS or the MW – UTU Agreement mandates integration of operations, personnel, bidding or changed labor agreement application in these circumstances."

The Carrier raises two procedural arguments, either of which, it asserts, will dispose of the claim. It argues this claim seeks interpretation and enforcement of Section 23.4 of the UTU Agreement, and as such, the claim is required to have been filed under the UTU Agreement. It notes BRS was advised of where to file the claim but declined to do so. The claim was filed with an officer under the BRS Agreement despite the Carrier's warning. The BRS has since abandoned its position that the BRS Agreement applies. Accordingly, the Carrier maintains the Organization appealed to the wrong officer, under the wrong Agreement and cannot be allowed to enforce one agreement by way of the grievance system under another contract.

The Carrier's second procedural argument involves timeliness. It contends that the time limit for filing the claim was 30 days from date of occurrence. It notes the final ruling from the NMB was dated April 5, 2005, yet the claim was not filed until June 15, 2012, more than seven years later. The Carrier discounts the Organization's assertion that the failure to wind down was a continuing violation.

It maintains that in order to establish a continuing violation, there must be a series of discrete continuing violations, cognizable as separate events, whereas this case involved a single event: the NMB ruling.

Under the NMB decision, BRS has standing to represent the Signalmen on the Line, and accordingly, it can file claims against BNSF on their behalf. The Carrier takes the position that it could continue to operate under the terms of the UTU Agreement after the NMB decision so long as it recognized BRS as the representative of the Signalmen on the Line.

The NMB decision is clear in confirming the status of BRS as the representative of the Signalmen on the Copper City Subdivision Line. As such, and to the extent BNSF recognizes two agreements, BRS is the representative under both the UTU and the BRS Agreements. It follows that BRS could have filed a claim under either agreement until such time as a wind down or other contractual termination was affected. The decision to file under the BRS Agreement did not revoke BRS' status as representative of Signalmen on the Line, nor did it preclude BRS from enforcing the terms of the UTU Agreement.

Because BRS opted to file under the BRS Agreement, the provisions of that Agreement apply to processing the claim. Under the 2004 BRS Agreement, Article 10 regarding the Grievance and Arbitration Procedure of the 1997 Agreement was supplanted with the following language:

**“All claims or grievances, except those involving discipline, shall be handled as follows:**

- 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 thirty - (30) days from the date of occurrence on which the claim or grievance is based. \* \* \***

On April 20, 2005, the Carrier notified BRS of its position regarding the NMB decision:

**“There had been no integration of operations – and we don’t plan one. Correspondingly, there is nothing in the National Mediation Board’s**

findings dated April 8, 2005 which makes your collective bargaining agreement effective on the Copper City Subdivision. \* \* \*

There is nothing in either the BNSF – BRS or the MW – UTU agreement that mandates integration of operations, personnel, bidding, or changed labor agreement application in these circumstances, and we have no intention of surrendering to you or to the BRS, our prerogatives to make these determinations ourselves.”

There was no response from the Organization until a September 6, 2005 letter where the Organization stated: “Therefore, if BRS is correct that the UTU Agreement still governs Copper City Signal work, then BNSF has the obligation to ‘wind down’ the UTU Agreement insofar as it applies to Signalmen.” It was clear that at this point, BRS was aware of the Carrier’s resistance to implementation of Section 23.4 of the UTU Agreement, yet no grievance was filed for years. Though the parties were in active correspondence following the NMB decision and the Agreement provided for mutually agreed extension of timelines, no agreement to waive timelines was in evidence. The claim here concerned was not filed until 2012, fully seven years after the NMB decision and notification to the BRS of the Carrier’s position regarding integration.

The Board is aware that the 1997 Agreement contained an express provision that missed time limits would result in final and binding resolution as expressed in the latest answer. No such provision appears in the 2004 language, indicating none was intended. This does not mean that the Board can or should ignore all time limits. The strict language abandoned by the parties would apply if a grievance were even one day late. It by no means lends the negotiated timelines to an interpretation that a claim can wait for seven years. The doctrine of laches, coupled with the evident intent of the parties to have claims promptly addressed, militates against a finding of timeliness.

The Board is persuaded the claim was not timely filed. The NMB decision was a singular event which occurred on April 5, 2005. There was no agreement between the parties to waive applicable time lines. There was no continuing violation because the language in question looked to “a final, authoritative ruling that BNSF craft and class lines apply on the former Montana Western property” as the prompting event for the mandatory wind down. The NMB April 8, 2005 decision met this criterion. Even if the Board were to opine that the timelines could be stretched due to concerns about when the failure to wind down became evident, such laxness in enforcing a clear timeline could not reasonably be stretched out for seven years. It follows that the

procedural requirements for processing a claim to arbitration have not been met and the Board must decline jurisdiction.

For the above reasons, this Board finds that it lacks jurisdiction over the subject matter of the grievance.

**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 31st day of October 2016.