Form 1 **NATIONAL RAILROAD ADJUSTMENT BOARD**
THIRD DIVISION

Award No. 44784
Docket No. SG-45719
22-3-NRAB-00003-200039

The Third Division consisted of the regular members and in addition Referee Meeta A. Bass when award was rendered.

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

"Claim on behalf of D.S. Beyen, D.H. Egan, R. Storbeck and R.G. White, for 30 hours each at their overtime rate of pay; account Carrier violated the current Signalmen's Agreement, in particular the Scope Rule and Rule 65, when it permitted contractors to perform the scope-covered work of pre-wiring and pre-assembling the highway grade crossing equipment received by Claimants on June 15, 2018 at Snooky Road (Milepost 534.98), on the De Quincy Subdivision, thereby causing the Claimants a loss of work opportunity." Carrier's File No. 1711797. General Chairman's File No. S-SR, 65-1748. BRS File Case No. 16081-UP. NMB Code No. 102."

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.

In 2004, Union Pacific transferred the Sedalia Signal Shop to the I & S Railroad, along with its employees who wired signal equipment for the field and the

existing collective bargaining agreement. Union Pacific Railroad does not manage or control the I &S Signal Shop employees. On June 15, 2018, the Claimants received pre-wired, pre-assembled crossing equipment. The I & S Signal Shop employees pre-wired the signal crossing mechanism and lights; installed the bells, gate guard, and cross bucks; and assembled all associated parts to the mast before shipping the necessary material for the project, which arrived on June 15, 2018. The work performed by I & S employees is covered in the Scope Rule of the Parties' Agreement.

By letter dated September 18, 2018, the Organization filed a claim with supporting documents and arguments contending that on June 15, 2018, Carrier violated the Scope Rule and Rule 65 of the parties' Agreement. The Organization argued that Carrier had permitted employees from the I&S Signal Shop to assemble all equipment associated with a crossing gate and send it out to eliminate traditional scope work reserved for the Claimants.

The Scope Rule and Rule 65 are incorporated herein in their entirety, and noted provisions of the Rules read as follows;

> **SCOPE RULE**
> **"This agreement governs the rate of pay, hours of service and working conditions of employees in the Signal Department, who construct, install, test, inspect, maintain or repair the following:**
> *******
> **1. (e) highway crossing warning systems and devices**
> *******
> **12. All other work generally recognized as signal work, performed in the field or signal shops. The classifications enumerated in Rule 1 include all the employees of the Signal**
> **Department performing work referred to under the heading of 'Scope.'**
> **13. This agreement will include the appurtenances and apparatus of the systems and devices referred to herein.**
> **NOTE 5: It is understood that this agreement is the result of the consolidation of several collective bargaining agreements with differences as to what work is performed by signal department employees. It is not the intent of the parties signatory hereto to either assign to employees subject to this agreement work reserved to another craft or to assign to another craft work reserved to signal department employees." (Emphasis added)**

RULE 65 – LOSS OF EARNINGS
An employee covered by this agreement who suffers loss of earnings because of violation or misapplication of any portion of this agreement will be reimbursed for such loss." (Emphasis added)

RULE 56 - CLAIMS AND GRIEVANCES
A. All 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. Should any such claim be disallowed, the Carrier will, within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employee or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance will be allowed as presented, but this will not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances.

By letter dated November 9, 2018, the Carrier found the claim to be without merit. The Carrier's response informed the Organization that it must provide documentation to support its claims, must cite specific agreement provisions and /or arbitral authority, and demonstrate the necessity of payment. Carrier concluded that the Organization failed to meet its burden of proof and denied the claim entirely.

By letter dated November 28, 2018, the Organization appealed the Carrier's denial letter dated November 9, 2018. The Organization stated that the provisions of Rule 56 require a reason for denial to the Organization's claim, and the information that the Carrier deemed necessary to make a response had been submitted in the first instance. Furthermore, the Organization stated that the claim should be allowed as presented per Rule 56(a).

By letter dated January 7, 2019, the Carrier responded to the Organization's appeal letter dated November 28, 2018. The Carrier stated that the Organization failed to advance the claim within 60 days from the date of occurrence. The Carrier also noted that the Agreement did not prohibit the purchase of finished assembled products and contended the Claimants suffered no loss of compensation.

On February 6, 2019, the parties conferenced this claim without resolving the dispute.

By letters dated February 28, 2019, the Organization supplemented its position in response to the denial letter dated January 7, 2019. By letter dated October 31, 2019, Carrier denied the claim with no change in its original position. By letter dated November 5, 2019, the Organization responded to the Carrier's letter dated October 31, 2019, reasserting its position on the scope-covered work. In a letter dated December 13, 2019, the Organization further responded to Carrier's letter dated October 31, 2019. The Organization attached a job posting sheet and a job description form for signalmen to substantiate that the work was reserved for the Claimants and not to be performed by others. Accordingly, the claim is now properly before the Board for adjudication.

Position of the Organization

The Organization contends that the Carrier failed to "provide the reasons for disallowance" as required by Rule 56. The Organization argues that the Carrier's vague responses to the initial claim did not provide the reasons for disallowance and did not satisfy the requirements of Rule 56. The Organization also contends that the scope rule reserves the right for the Claimants to construct and install highway crossing warning systems and devices, which includes assembling and wiring all parts and materials associated with the crossing gate. The Organization argues that substantial evidence presented establishes that Carrier violated the Agreement in its assignment of scope-covered signal work to those not covered under the Agreement and created a loss of work opportunity for the Claimants. It is the position of the Organization that the claim should be allowed in its entirety.

Position of the Carrier

The Carrier contends that the claim is untimely filed. The Carrier argues that the Organization did not establish the date of occurrence but rather the date of discovery. The Carrier asserts that even with a discovery date on June 15, 2018, Organization did not submit its claim to the Carrier until September 18, 2018, beyond the sixty-day time limits. The Carrier also contends that the pre-assembly work was not scope-covered. The Carrier asserts arbitral precedents that find that the purchase of pre-assembly or finished products for installation by Carrier forces is not an agreement violation. The Carrier argues that there is no loss of work opportunity where the work does not fall under the scope of the Agreement. Moreover, the Carrier

further contends that the Organization has not met his burden of proof, and the claim should be denied.

After a review of the record and reflection on the arguments of the advocates, the Board finds that the initial inquiry for any claim is its timely filing within the time limits negotiated by the parties. RULE 56 states that all claims or grievances must be filed within sixty (60) days from the date of occurrence. Arguably, the Organization is unaware of when the third party assembled the equipment and became aware of said purchase when the delivery was made, but the assembly of the equipment took place prior to the delivery. It is not disputed that delivery was made on June 15, 2018, or that the assembly of the equipment happened prior to the delivery. The claim, however, was not filed until September 18, 2018, more than sixty days past the delivery date and well past the date of assembly, the date the grievance is based up-on.

The parties' Agreement provides clear and unambiguous time limits for filing claims. The Board is required to respect the agreed-upon timelines and dismiss claims that do not comply with them. Accordingly, the Board finds that this claim is time-barred, and dismissed.

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 19th day of September 2022.