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

Award No. 45264
Docket No. SG-47538
24-3-NRAB-00003-220576

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

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(CSX Transportation, Inc.

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen:

Claim on behalf of E. Bucher, R.V. Evans, III, S.S. Finn, Jr., R.D. Fordham, J.W. Lee, E.W. Little, G.E. McCullough, T.D. Menefee, E.E. Millison, Jr., W.A. Moore, T. Orr, W.C. Roberts, M. Rubio, K.L. Smith, W.S. Thomas, and K.T. Thompson, for 40 hours per week at their respective straight-time rate of pay beginning February 17, 2020, and continuing, account Carrier violated the current Signalmen's Agreement, particularly Scope Rule in the 1987 Implementing Agreement and Rule 5, when, on February 17, 2020, it abolished the entire work group and the Savannah Signal Shop and sent all repairs, refurbishment equipment to outside vendors not covered under the Agreement, thereby denying the Claimants opportunities that accrued to them. Carrier's File No. 21-05042, General Chairman's File No. SCL-01-18-21A, BRS File Case No. 5518, NMB Code No. 312 - Contract Rules: Scope."

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 Claimants in this matter were assigned to the Refurbishment Section of the Carrier's Savannah Signal Shop. Prior to the events here, the Claimants were responsible for refurbishing certain signal equipment that could not be repaired in the field. On February 7, 2020, the Carrier sent an email stating that on February 14, 2020, it intended to discontinue use of the Refurbishment Section of the Savannah Signal Shop and furlough the 16 employees (the Claimants) who were working within that section.

Thereafter, the Carrier sold decommissioned equipment in disrepair to outside vendors and purchased recently refurbished equipment through other vendors.

On February 28, 2020, the Organization challenged the Carrier's actions in the United States District Court for the Western District of Virginia, alleging that the matter was a "major dispute" under the Railway Labor Act. On December 8, 2020, the court dismissed the suit, finding that the claim presented a "minor dispute" subject to the compulsory arbitration provisions of the collective bargaining agreement.

The Organization filed the instant claim on January 18, 2021. The Carrier denied the claim in a letter dated May 18, 2021. Following discussion of this dispute in conference, the positions of the parties remained unchanged, and this dispute is now properly before the Board for adjudication.

The Organization contends that its claim was timely filed, as until the US District Court ruled that the dispute was not a "major dispute," it remained a major dispute under *Consolidated Rail Corp. v. Railway Labor Executives' Ass'n*, 49 U.S. 299 (1989)(the "*Conrail*" decision). The Organization contends that it cannot file a claim in advance of a suspected violation and thus, could not file a claim until the dispute had been determined to be "minor." The Organization contends that there is no dispute that the Organization's claim was filed within 60 days after the court's ruling.

The Organization contends that the Carrier violated the parties' Agreement, particularly the Scope Rule when it furloughed the Claimants and then used outside vendors to perform refurbishment and reclamation work, which had previously been exclusively performed within the Savannah Signal Shop. The Organization contends that the Scope provides the work of refurbishing signal equipment is exclusively

reserved to those working under the parties' Agreement. In addition, the Organization contends that the Scope Rule restricts the Carrier from using contractors not covered by the Agreement to perform scope-covered work.

The Organization contends that the 1987 Implementing Agreement which states, "It is further understood that the work referred to herein will not be sent off the Carrier's properties," specifically restricted the Carrier from having refurbishment work sent off the property to be performed elsewhere.

The Organization further contends both the Scope Rule and the Implementing Agreement contain clear and unambiguous language recognizing that work contained within the Agreement belongs to the employees covered by the Agreement.

The Organization contends that the Carrier does not deny that it has purchased refurbished signal equipment. The Organization contends that the Carrier's assertion that it is not in violation of the Agreement because it has ceased refurbishing operations and has entered into purchase and sale agreements with outside vendors is unavailing because the items purchased were refurbished items specifically named in the Scope Rule and guaranteed to the Claimants. The Organization contends that the Carrier's assertion that it has sold equipment and purchased equipment from separate vendors is not supported by the record.

The Organization contends that the Claimants have suffered a continuing loss of work opportunity, and the Board should compensate them as claimed.

The Carrier contends that the claim is procedurally defective, because the Organization failed to timely file its claim. Uniform Rule 3(a) of the parties' Agreement requires that claims be filed within 60 days of the occurrence giving rise to the claim. The Carrier contends that there is no dispute that the Carrier gave notice to the Organization of the furloughs on or before February 7, 2020, to be effective on February 14, 2020, but the instant claim was not filed until January 18, 2021.

The Carrier contends that precedent makes clear that the filing of a lawsuit in a court does not toll the time limits, citing *Union Pacific R. R. v. Sheehan*, 439 US 89 (1978); NRAB Fourth Division, Award 3045 (O'Brien); NRAB Third Division, Award 25130 (Vaughn); *PSA Airlines, Inc. and Ass'n of Flight Attendants – CWA*, Grievance No. 25-99-02-24-09, at 10-11 (Arb. Conway, 2010).

The Carrier contends that the claim is not "continuing" in nature. The Carrier contends that the Organization's claim clearly states that the Carrier violated the Agreement "when, on February 17, 2020, it abolished the entire work group and the Savannah Signal Shop and sent all repairs, refurbishment equipment to outside vendors." The Carrier contends that the claimed violation is a single event, not a continuing one. The Carrier contends that the fact that the employees may continue to accrue damages does not mean that the claim is a continuing one.

The Carrier also contends that the Organization's claim must be denied on the merits, as it has failed to show that the Carrier sent repairs or refurbishment of equipment to outside vendors. The Carrier contends that the records show that it sells certain equipment to a company, relinquishes ownership, and subsequently purchases new or refurbished equipment from one of several different companies.

The Carrier contends that it has the managerial right to sell equipment it has no further use for and to purchase new or refurbished equipment, citing Award 1 of SBA 1146. The Carrier contends that it does not dispute that it sold the equipment to Burco on March 19, 25, and May 4, 2021. But, the Carrier contends that the Organization has failed to show that the Carrier has contracted this work, which was previously performed on the property, to outsiders. The Carrier contends that the Scope-covered work is refurbishment of Carrier-owned equipment, and no such work is performed off site at the Carrier's behest. The Carrier contends that the Organization's assertion that the Carrier is "laundering" equipment is both unproven and speculative.

Finally, the Carrier contends that the Organization has failed to prove that the Claimants were entitled to any monetary remedy. The Claimants are gainfully employed or chose not to return from furlough when recalled.

The Carrier raised the threshold issue of the timeliness of the grievance. The parties' Agreement provides, at Uniform Rule 3(a):

> **All claims and grievances, except for continuing claims (as provided in (d) below) and those involving discipline must be presented in writing, by the employee or on his behalf by a BRS representative, to the designated Carrier officer authorized to receive same within sixty (60) calendar days from the date of occurrence on which the claim or grievance is based.**

The Carrier notified the Organization on February 7, 2020, that the Claimants' positions would be abolished effective February 14, 2020. The instant claim was filed

on January 18, 2021, unarguably more than 60 days from the date of the occurrence on which the claim is based.

Nonetheless, the Organization contends that the claim is not untimely because it initially filed a lawsuit in federal court, as it considered the Carrier's alleged violation to be a major dispute under the Railway Labor Act. Citing the *Conrail* decision, the Organization argues that the dispute was a "major" dispute until a court accepted the Carrier's defense that the dispute was "minor." The Organization contends that until this determination was made, a claim under the arbitration system would have been premature. The Organization points out that the instant claim was filed within 60 days of the court's ruling.

The Carrier presented persuasive precedent that the filing of a court action does not toll the time period for filing a claim under the arbitration system. In *Union Pacific R. R. v. Sheehan*, 439 US 89 (1978), the Court affirmed a decision by the National Railroad Adjustment Board that the time limitation of a governing collective bargaining agreement is not tolled by the filing of a court action. *See, also,* Fourth Division Award 3045. In *PSA Airlines, Inc. and Ass'n of Flight Attendants – CWA, Grievance No. 25-99-02-24-09, at 10-11 (Arb. Conway, 2010)*, the Board considered whether a lawsuit tolled the time limitations in the collective bargaining agreement, writing,

> **The sin here, as we see it, was not to go for the fences with a motion for injunctive relief but to do so without preserving the jurisdiction of the Board. In the absence of plausible legal support for the proposition that a lawsuit stopped the clock for purposes of Section 15, whether or not AFA acted in good faith is an interesting discussion, but it offers little in aid of analysis.**

The Organization also argued that the violation was a continuing one, and for this reason, the claim is not untimely. However, the basis for the claim was the abolishment of the Claimants' positions, which happened no later than February 14, 2020. As this Board wrote in Third Division Award 29894,

> **Numerous Awards support the Carrier's position that a claim based on a specific action or inaction of the carrier which occurs on a specific date such as establishing or abolishing a position, for instance, is not a "continuous claim" even though there may be continuing liability.**

This Board's jurisdiction arises from the collective bargaining agreement and we have no power to alter or ignore provisions negotiated by the parties. 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 14th day of May 2024.