

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22569
Docket Number CL-22578

Joseph A. Sickles, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and
(Steamship Clerks, **Freight** Handlers,
(**Express and Station Employees**
(**Soo Line Railroad Company**

STATEMENT OF CLAIM: **Claim of** the System Committee of the Rrotherhood
(GL-8617) that:

(1) Carrier violated the provisions of Rule 1, 2, **6(a) and**
kg(a) of the effective **Clerical** Agreement when it contracted for the
use of a person in the **employ** of an employment contractor to perform
the duties of **the** Stenographer position at Shoreham, Minnesota, on
December **6, 7, 8, 9, 10 and 13, 1976.**

(2) Claimant, John E. Harry, **shall now** be compensated at the
rate of time **and one-half** for **6½** hours at the Stenographer's rate for
each date, December **6, 7, 8, 9, 10 and 13, 1976,** for this violation of
the effective Clerical Agreement.

OPINION OF BOARD: **There appears** to be no question that on the Claim
dates, the Carrier utilized the services of an
employment contractor who **provided an individual to** perform clerical
work when the **regularly assigned** stenographer was away from work due to
illness. **That** activity violated certain provisions of the agreement
between the parties; which **violation** has been acknowledged by carrier,
who has offered to resolve the matter by **paying** the claim at the
straight-time rate.

The Organization has continued **to** press for **time and one-**
half payments and the only issue before us would appear to be whether
or not the claim should be paid at the overtime or straight-time rate.

In his presentation here, Claimant has demonstrated that he
was entitled to be called to perform the work **improperly performed** by
the outside source. Under those **circumstances, we are inclined to**
sustain the **claim. This issue has been before this Board (straight-time**
rates 8s opposed to time and one-half rates) on a number of occasions.
We have held that it is **appropriate to award payment** at time and one-half
rates **if the employee** would have been compensated at that rate bad be
or she been **used to perform the work involved in the claim. See, for**
example, Awards 21767, 21707, 20413 and 19947.

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We find nothing of record to persuade us to alter the above cited authorities and thus, we will sustain the claim for payment at the time and one-half rate. y-2

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and, the **Employees** involved in this dispute are **respectively** Carrier and **Employees** within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment **Board** has jurisdiction over the dispute involved herein; and

That the agreement **was** violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, **Illinois**, this 16th day of **October 1979**.

