

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 32107  
Docket No. MW-31947  
97-3-94-3-297

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

**(Brotherhood of Maintenance of Way Employees**  
**PARTIES TO DISPUTE: (**  
**(Consolidated Rail Corporation**

**STATEMENT OF CLAIM:**

***"Claim of the System Committee of the Brotherhood that:***

- (1) The Agreement was violated when the Carrier assigned outside forces (Klepec Trucking) to transport two (2) backhoes from Mansfield, Ohio to the Ashtabula Harbor Yard on October 2, 1992, instead of assigning Vehicle Operator D. R. Stinchcomb to perform said work (System Docket MW-2910).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant D. R. Stinchcomb shall be allowed the difference between the fourteen (14) hours' straight time rate the Carrier paid him to settle the claim and the time and one-half rate he would have earned has he been properly assigned thereto."**

**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.

There is no dispute on the facts. On October 2, 1992, the Claimant's rest day, the Carrier permitted an outside contractor to transport two backhoes from Mansfield, Ohio, to Ashtabula Harbor Yard. This is the Claimant's work and the Scope Rule was violated. The Claimant was available, qualified and not called to perform this rest day assignment.

The substance of this dispute is the proper payment for the violation. The Carrier asserts that the Claimant performed no work on October 2, 1992 and is entitled to the straight time rate of pay for work not performed.

The Organization argues that the Carrier's assignment of a contractor to perform work which belonged to the Claimant requires punitive payment. The Organization argues that this was work that if properly assigned to the Claimant on his rest day would have entitled Claimant to payment at the time and one-half rate of pay.

Under these circumstances and within a full review of all the Awards and arguments presented by the parties, the claim is sustained. The proper remedy herein is for Claimant to be compensated what he would have earned had he been properly called to perform service on his rest day. Absent this Agreement violation, Claimant was entitled to the time and one-half rate.

### **AWARD**

**Claim sustained.**

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**ORDER**

**This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.**

**NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division**

**Dated at Chicago, Illinois, this 9th day of July 1997.**