

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36227
Docket No. MW-35832
02-3-99-3-828**

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Soo Line Railroad Company (former Chicago, Milwaukee
(St. Paul and Pacific Railroad Company)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned outside forces (Phillips Asphalt Paving, Inc.) to perform Roadway Equipment and Machine Sub-department work (remove gravel, level and spread new stone) at Burnham Bridge switch lead in Milwaukee, Wisconsin on July 20, 1997 (System File C-31-97-C080-06/8-00228-016 CMP).**
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with advance written notice of its intent to contract said work as required by Rule 1 and failed to enter good-faith discussions to reduce the use of contractors and increase the use of Maintenance of Way forces as set forth in Appendix I.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Mr. T. D. Watson shall be compensated for twenty-one hours at the applicable time and one-half (1-1/2) rate of pay. . . .”**

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.

Except as to particular circumstances of contracting of work by the Carrier, this dispute is identical to that reviewed in Third Division Award 36225, and the Board reaches the same conclusion.

As to the appropriateness of a monetary remedy for a claimant already under pay, this, too, has been supported by innumerable Awards in the face of a clear Rule violation. Following the reasoning in Third Division Award 35378, however, the appropriate rate of pay is at straight time rather than at the claimed time and one-half.

AWARD

Claim sustained in accordance with the Findings.

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 24th day of September 2002.