

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 38965  
Docket No. MW-37231  
08-3-NRAB-00003-020199  
(02-3-199)

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

**PARTIES TO DISPUTE:** (Brotherhood of Maintenance of Way Employes  
(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 (Ron Lenz Excavating) to perform routine Maintenance of Way work (remove track spoils from crossings and related work) at road crossings at Brookfield Road, Wadsworth Road and Tower Automotive Switch in Milwaukee, Wisconsin on October 11, 12, 13, 25, 26, November 1, 2, 3, 4, 5, 6 and 11, 1999 (System File C-33-99-C080-07/8-00228-041 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 out said work as required by Rule 1.
- (3) As a consequence of the violation referred to in Part (1) and/or (2) above, Claimant William Konetzke shall now be compensated for one hundred twenty-two (122) hours' pay at his applicable time and one-half rate of pay, Claimant Robert Smithson shall be compensated for thirteen (13) hours' pay at his respective time and one-half rate of pay and Claimants Jerry Gresk and James Gresk shall each be compensated for sixty-four (64) hours' pay at their respective time and one-half rates 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.

The principles that apply to the instant claim have been well established in an extensive line of Board Awards between these same parties and need not be restated here. See, for examples, Third Division Awards 32861, 35378, 36225, 36227, 36527, 36541, 36573, 36575, and 38012.

The work in dispute was of the kind previously performed by Carrier forces, therefore the Carrier was required to provide the General Chairman with advance written notice of its intention to contract the work. It is undisputed that the Carrier did not provide such notice. The consequence of the failure to provide notice, in line with the cited Awards, is to compensate the Claimants for the number of hours worked by the contractor forces to the extent the Claimants were not unavailable. The Awards establish that the straight time rate of pay is proper for such notice violations. Thus, on the record before the Board, the only question remaining for determination is the amount of the damages to be awarded to the respective Claimants.

It was undisputed that Claimant Konetzke severed his employment with the Carrier and released all pending claims during handling on the property. Because these claims were presented as being personal to the Claimants named, his portion of the claim is extinguished and no compensation is awarded to him. Claimant Smithson's claim was reduced by the Organization to 13 hours for November 11, 1999 due to duplication of hours in a different claim. Smithson should be compensated for the 13 hours. The claim for J. A. Gresk should be reduced by 24.5

hours due to vacation on three of the claim dates. Accordingly, he is awarded 39.5 straight time hours of additional compensation. The claim for J. E. Gresk should similarly be reduced by 22 hours due to his being on vacation and/or training on November 1 and 3, 1999. As a result, he is awarded 42 straight time hours of addition compensation.

**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 29th day of February 2008.