

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 Brotherhood
(GL-8617) that:

(1) Carrier violated the provisions of Rule 1, 2, 6(a) and 49(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 $6\frac{1}{2}$ 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 as 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 had he or she been used to perform the work involved in the claim. See, for example, Awards 21767, 21707, 20413 and 19947. X-1

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:

U. W. Pauler
Executive Secretary

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

