

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 34053  
Docket No. MW-32485  
00-3-95-3-383**

**The Third Division consisted of the regular members and in addition Referee Robert M. O'Brien 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 Management Supervisor B. Kotylak, instead of B&B Pump Repairer R. Mennenga, to perform scale testing and minor adjustments at various scale facilities between Muscatine and Clinton, Iowa on April 5, 6, 7, 8 and 11, 1994 (System file C-09-94-C330-01/8-00200 CMP).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant R. Mennenga shall be allowed thirty-one and one-half (31½) hours pay at his time and one-half rate."**

**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.

On April 5, 6, 7, 8 and 11, 1994, the Carrier assigned Management Supervisor B. Kotylak to perform scale testing and minor adjustments to scales owned by consignees between Muscatine and Clinton, Iowa. The scales are used to weigh commodities shipped with the Carrier.

It is the Organization's position that the Claimant was regularly assigned as a Pump Repairer on the above dates and ordinarily and customarily performed scale testing and made minor repairs and adjustments to both Carrier owned and industry owned scales. Consequently, he should have been assigned this work rather than a Management Supervisor, according to the Organization. It therefore requests that the Claimant be compensated 31½ hours at the overtime rate which was the time expended by Supervisor Kotylak on the work normally performed by the Claimant.

On this property, for some nine years, the work of testing scales and making minor adjustment to scales has been performed by a Pump Repairer. Pump Repairers have performed this work at both the Carrier owned scales and industry owned scales. This was routine maintenance that should not have been assigned to a Supervisor.

It is the Board's opinion that Rule 1, the Scope Rule, was violated when the Carrier assigned a Supervisor to perform routine B&B maintenance work. Therefore, the Claimant must be made whole for this lost work opportunity. However, we subscribe to those Third Division Awards which hold that the straight time rate, rather than the overtime rate, is the proper compensation for lost work opportunities. [See, for example, Third Division Award 28990.]

### **AWARD**

**Claim sustained in accordance with the Findings.**

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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 25th day of May, 2000.**