

AWARD NO. 23  
CASE NO. 23

Brotherhood of Maintenance of Way Employees  
and  
Kansas City Southern Railway Company

**STATEMENT OF CLAIM:**

### FINDINGS OF THE BOARD:

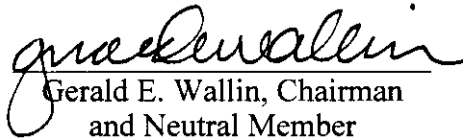
The basic facts are not in dispute. The Carrier used an outside contractor, Steel City Railroad Construction, Inc., who furnished a backhoe and operator, to perform track rehabilitation work on April 23, 24 and 25, 2001. The work was done on the Transcontinental Division of the former South Rail Corporation. Claimant is a Heavy Machine Operator with regularly assigned hours of 7:00 am to 3:30 pm Monday through Friday and was qualified to operate a backhoe. The Claim alleges that he was available to perform the disputed work as daily or weekend overtime.

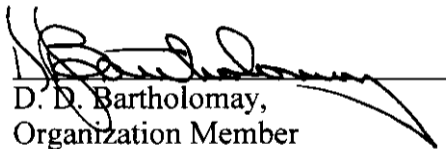
The Carrier has raised several defenses to the Claim, among them is the fact that Claimant was fully employed and suffered no loss on the dates the contractor performed the work. Carrier also contends that any remedy received by Claimant would amount to a penalty, which is not authorized by the controlling Agreement. Finally, the Carrier maintains that the work was permissibly contracted pursuant to a practice with a duration of more than three years.

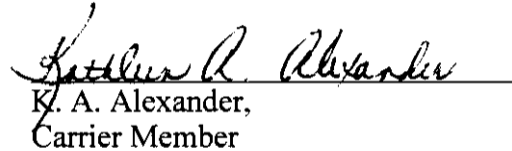
Both parties cited prior awards in support of their respective positions. After review of the unique facts of this record, however, we find that the Carrier did violate the applicable Agreement

when it contracted out the work in the manner it did. Under the circumstances, on a non-precedential, non-referable basis, Claimant shall be allowed sixteen (16) hours of pay at his straight time rate in effect on the Claim dates.

AWARD: The Claim is sustained in accordance with the Findings.

  
Gerald E. Wallin, Chairman  
and Neutral Member

  
D. D. Bartholomay,  
Organization Member

  
K. A. Alexander,  
Carrier Member

DATE: 7-8-03