

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 39907
Docket No. SG-38733
09-3-NRAB-00003-050137
(05-3-137)**

The Third Division consisted of the regular members and in addition Referee Steven M. Bierig when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Kansas City Southern Railway Company**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Kansas City Southern:

Claim on behalf of P. W. Darity, for two hours and 40 minutes at his time and one-half rate of pay, account Carrier violated the current Signalman’s Agreement, particularly Rule 46, when it denied payment of overtime for the performance of ordinary maintenance work by the Claimant on January 10, 2004, between West Greenville and DG&O connection. Carrier’s File No. K0604-5822. General Chairman’s File No. 04-025-KCS-185. BRS File Case No. 13058-KCS.”

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 Claimant in this case is P. W. Darity, who at the time this claim arose, was assigned to the monthly-rated position of Signal Maintainer, Position No. 835. The Claimant was headquartered at Greenville, Texas, and his scheduled work days were Monday through Friday, from 7:00 A.M. to 4:00 P.M., with one hour for lunch. As this was a monthly-rated assignment, the Claimant's stand-by day was Saturday, and Sunday was the assigned rest day.

On Saturday, January 10, 2004, the Claimant responded to an emergency call to repair a track light. The light had become inoperable because a Maintenance of Way crew working in the area had accidentally severed a track-wire causing an outage. The Claimant claimed two hours and 40 minutes of overtime. The Carrier denied the claim on the basis that trouble calls that occur on an employee's stand-by day are considered covered by the monthly rate of pay.

The Organization appealed the above-captioned disallowance, contending that the Claimant should be compensated for the overtime on January 10, 2004 because the work of repairing the light was "planned ordinary maintenance" that qualifies the Claimant to be paid for such work over and above his monthly compensation at the overtime rate. Said work was outside the scope of work that could be required of the Claimant without compensation on his stand-by day.

Conversely, the Carrier takes the position that the Organization cannot meet its burden of proof in this matter. The Carrier contends that the work involved the replacement of a track light, which displays the color of a signal. The failure of such an apparatus is an emergency condition requiring immediate attention and is not ordinary maintenance. While it is uncontested that the Maintenance of Way work was preplanned, it certainly cannot be said that the outage of the track light was foreseeable. This was clearly an emergency situation that required immediate attention. It was not within the realm of ordinary maintenance.

After a careful review of all facts and circumstances in this case, the Board finds in favor of the Carrier. As noted above, the burden of proof is on the Organization to prove that the Claimant was performing ordinary maintenance

when he was called to replace the track light. The Organization failed to meet that burden. We find that the Carrier properly characterized the work as emergency work and not ordinary maintenance. Accordingly, the claim is denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 31st day of August 2009.