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**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 13755
Docket No. 13485
03-2-99-2-75**

The Second Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

**(International Association of Machinists and
(Aerospace Workers
PARTIES TO DISPUTE: (
(Kansas City Southern Railway Company**

STATEMENT OF CLAIM:

“Claim of Employee:

- 1. That the Kansas City Southern Railway Company (hereinafter referred to as the “Carrier”) violated Rule 44 of the Controlling Agreement, effective April 1, 1980, as amended between the Kansas City Southern Railway Company and its Employees represented by the International Association of Machinists and Aerospace Workers (hereinafter referred to as the “Organization”) when Foreman Curtis Mills inspected locomotives within the shop limits instead of calling Machinist D. W. Dourty (hereinafter referred to as the “Claimant”) from the overtime board.**
- 2. Accordingly, we request that for this violation, the Claimant be compensated for two hours and forty minutes at his pro rata rate of pay.”**

FINDINGS:

The Second 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.

Rule 44 of the Machinists' Agreement provides in relevant part that "Machinists' work shall consist of . . . engine inspecting. . . ." The claim dated May 18, 1998 asserts that "[o]n March 19, 1998 Car Foreman Curtis Mills checked the fuel and checked if engines KCS 700-621 had ditch lights, this was #709's power at about 1815 hrs."

By letter dated November 9, 1988, the Carrier stated:

" . . . On the dates of claim, foremen checked for ditch lights and fuel on sets of locomotives. The work did not require special tools or require special training nor did it exceed two hours. As such, the work can only be considered incidental work, if not deminimus [sic]. Checking for ditch lights and fuel is nothing more than simple tasks that took less than five minutes."

On the property, the Organization did not refute the Carrier's assertion that "[c]hecking for ditch lights and fuel is nothing more than simple tasks that took less than five minutes."

Unlike Second Division Award 13754, we find sufficient facts concerning the disputed work are present in the record. The record shows that on March 19, 1998 Foreman Mills checked for ditch lights and fuel on locomotives and that such work took less than five minutes.

We need not address the parties' arguments concerning whether such work was exclusively scope covered Machinists' work or permissibly performed by a Foreman as incidental work. Rather, we find that such "simple tasks that took less

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than five minutes” which are at issue in this case can only be considered as de minimis. On that basis alone, the claim shall be 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 Second Division**

Dated at Chicago, Illinois, this 1st day of October 2003.