

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 35587
Docket No. SG-35592
01-3-99-3-511

The Third Division consisted of the regular members and in addition Referee Curtis Melberg when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(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 Railroad (KCS):

Claim on behalf of P. W. Darity for payment of 45 hours at the time and one-half rate, account Carrier violated the current Signalmen’s Agreement, particularly Rule 12(a) when it required the Claimant to standby on the weekend of February 7 and 8, 1998. Carrier File No. K0698-5086. General Chairman’s File No. 987512. BRS File Case No. 11042-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 was the incumbent of monthly rated Signal Maintainer Job 836, headquartered at Garland, Texas.

Saturday and Sunday, February 7 and 8, 1998, the dates in question here, were scheduled as the Claimant's weekend off, time when he would not have to keep himself available for standby call service. The adjoining Signal Maintainer on Job 835 was assigned by the Carrier to provide that service on the Claimant's job from 4:00 P.M. on Friday, February 6, until 7:00 A.M. on Monday, February 9.

On both February 7 and 8, however, the Carrier found it necessary to have the Claimant perform FRA - required tests of signal equipment on his assigned territory. He did this testing work for ten hours on February 7 and for eight hours on February 8. The testing work was considered ordinary maintenance, so he was compensated for those hours at the time and one-half rate. After his work was finished on those dates, his time was his own.

The instant claim is based on the Organization's contention that the Carrier required the Claimant to perform standby call service on February 7 and 8 and, in so doing, violated Rule 12(a), second paragraph, of the parties' Agreement, reading as follows:

"Signal Maintainers and Signal Inspectors shall be required to stand by for call service not more than one (1) weekend out of every two (2). Standby schedule shall be prepared by Management and a copy will be provided to the Local Chairman. Assigned standby may be adjusted by the affected employee and an adjoining Signal Maintainer, or Inspector where appropriate, subject to approval of the Signal Supervisor. The Carrier shall furnish each Signal Maintainer and Inspector a pager for call service." (Emphasis added.)

The Organization states its position regarding the 45 hours of claimed overtime pay as follows:

"The Claimant performed service for the Carrier on his weekend off and was paid overtime for these hours. The . . . claim for 45 hours overtime is for compensation for having to standby on his weekend off. Which is from 1600 hours on Friday to 0700 hours on Monday. Claimant was unable to come and go as he pleased. . . ."

The Carrier disputes the Organization's contentions and asserts the claim is without merit for several reasons: (1) the Claimant was not required to stand by for call service on the dates in question, and, in fact, a Signal Maintainer on an adjoining job was assigned to provide that service on the Claimant's job on those dates; (2) the Organization recognizes the Claimant worked on both February 7 and 8 but fails to explain how he could be standing by and working at the same time; (3) existing Rules, including Rule 12(a), which is cited by the Organization, do not prohibit the Carrier from requiring a Signal Maintainer to work weekends he is not scheduled to stand by for call service; and (4) existing Rules specifically contemplate that Signal Maintainers may be assigned to work Saturdays and Sundays without regard to whether or not standby service is involved.

Rule 46(a), reading, in part, as follows, is one of the Rules cited by the Carrier:

"RULE 46

MONTHLY RATED EMPLOYEES

(a) . . . Signal Maintainers . . . will be paid a monthly rate. . . . Except as otherwise provided, employees filling these positions shall be assigned one regular rest day per week, Sunday, which is understood to extend 24 hours from their regular starting time. Rules applicable to hourly rated employees shall apply to all service on Sunday and to ordinary maintenance or construction work on holidays or on Saturdays."
(Emphasis added)

On this record, we find the Organization failed to satisfy its burden of proof. The claim alleges the Claimant was required to "standby" on the dates in question, but there is no evidence this was the case. The portion of Rule 12(a) cited by the Organization applies to "stand by for call service" only, and, as indicated above, what little probative evidence there is in the record establishes the Claimant was relieved of his responsibility to be available for such service during the weekend by a Signal Maintainer on an adjoining job. What the Organization needs to support its claim, and what it does not have, is a provision in the parties' Agreement that prohibits the Carrier from requiring a Signal Maintainer to work on weekends he is not scheduled to be available for standby call service unless payment of compensation beyond that required by existing Rules is made.

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 24th day of July, 2001.