

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35704
Docket No. SG-35593
01-3-99-3-513**

The Third Division consisted of the regular members and in addition Referee Curtis Melberg 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 Railroad (KCS):

Claim on behalf of G. L. Lansdale for 34 hours pay at his half-time rate, account Carrier violated the current Signalmen’s Agreement, particularly Rule 12, when it required the Claimant to perform Signal Maintainer’s duties between December 2 and December 15, 1997, while he held the position of Signal Inspector and failed to compensate the Claimant at his time and one-half rate. Carrier File No. K0698-5091. General Chairman’s File No. 986112. BRS File Case No. 10990-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.

During the time in question, December 2 - 15, 1997, the Claimant, a Signal Inspector, headquartered at Garland, Texas, performed 34 hours of FRA-required tests on certain

signal equipment located within his assigned territory. The tests were done during his regularly assigned hours of work, and he was compensated therefor at his regular, straight-time rate of pay.

The Organization contends the FRA testing work done by the Claimant was not his regularly assigned duties, but rather Signal Maintainer's duties, and, as such, required the Carrier, under Rule 12(c) of the parties' Agreement, to allow him additional half-time pay for the 34 hours involved. Rule 12(c) reads as follows:

"Signal Inspectors will be assigned to designated territories and will be compensated additional half-time pay during regular assigned hours when required by Carrier to work off assigned territory or required to perform duties that are not regularly assigned duties. Signal Inspectors will be paid under Rule 10(d) of the agreement when required to work off assigned territory outside regular assigned hours." (Emphasis added)

As support for its position, the Organization submitted letters from a retired Signal Supervisor and two active Signal Inspectors, one of whom is the Claimant, which include statements that Signal Maintainers have, in the past, performed periodic tests and inspections of signal equipment. The Signal Maintainer's classification in Rule 2(f) of the parties' Agreement reads as follows: "SIGNAL MAINTAINER: An employee assigned to maintain a designated territory, to inspect, test, adjust, repair, clear trouble on, and maintain signal equipment including signal electronic equipment, all detector systems specified in Rule 1 [Scope] of this Agreement. He shall also perform installations incidental to the maintenance of his designated territory." The Organization contends that the Claimant was required to perform the testing work in question because the Signal Maintainer assigned to the territory was unable to keep up with the schedule. The Rules Standards and Instruction manual, the Organization also points out, provides that "Signal Maintainers shall be responsible for making and reporting all periodic test and inspections, as directed by Signal Supervisor."

The Carrier, in rejecting the claim, notes that inspecting and testing are among the duties classified as Inspectors' duties in Rule 2(a) of the parties' Agreement:

"RULE 2 - CLASSIFICATION

The following classifications include all the employees of the Signal Department performing the work referred to under Rule 1. . . .

(a) INSPECTOR: An employee whose principal duties are (but not limited to) inspecting, testing and repairs of signal apparatus as outlined in Rule 1 [Scope] of this Agreement.”

The Carrier’s defense also includes argument (1) that the parties’ Agreement does not give exclusive right to testing and/or inspection work to either Inspectors or Signal Maintainers (2) that all of the duties covered by the Agreement’s Scope and Classification Rules, including testing and inspecting, are regularly assigned duties of Inspectors as well as Signal Maintainers, and (3) that no time limit is imposed as to when those duties can be assigned to either or both of those classifications.

A letter in the record written by the Signal Supervisor includes assertions that he worked as a Signal Inspector for the Carrier from 1985 until 1993 and during that time did every required test that can be done on signal equipment, including the kind of tests in contention in the instant case. The Signal Supervisor notes that even the statements submitted by the Organization in support of the claim recognize that such tests have been done by Inspectors and others in the past. Attached to the Signal Supervisor’s letter are copies of forms indicating the Claimant performed FRA-required tests of signal equipment in September 1997, a few months before the dates in question here. Referring to the Organization’s quotation from the Rules Standards and Instruction manual, the Signal Supervisor points out that the manual also states, “Inspectors, Foremen and Signalmen shall perform all FRA test requirements in compliance with KCS Rules, under direction of Signal Supervisor.”

Based on the record before us, we conclude that the Organization failed to establish that the FRA-required signal tests the Claimant performed on the dates in question were not regularly assigned duties. Indeed, even a portion of the Claimant’s own written statement, which was introduced by the Organization in support of the claim, appears to have an undermining effect:

“This letter is in reference to your request for information concerning my assigned duties as a Signal Inspector. Bulletin #1886 for job # 897, Signal Inspector, Garland, Tx, was posted April 22, 1994. I was assigned to the position May of 1994. Originally, I had no intention of bidding on this position until Mr. S. R. Taylor, Signal Engineer, called and asked me personally if I would take the job. Having never been an inspector before, I was naturally quite curious as to what would be expected of me and under what circumstances I would be paid overtime. On my territory I was told I

would be responsible for all 2-year, 4-year and 10-year FRA testing-2-year testing meaning all FRA locking tests including polar relays; 4-year testing meaning all relay testing due at the time; and 10-year testing meaning insulation resistance testing of cable or meggering. In addition, I would be responsible for testing prior to cutover of train control and grade crossing equipment, testing during cutovers, wiring in new equipment and making circuit changes to and modifying existing signal circuits, (in which case I would do all necessary disarrangement testing associated with the change). . . .”

The Organization has the burden of presenting competent evidence to prove the validity of its claim. It has not successfully carried that burden. Therefore, we have no alternative but to deny the claim.

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 19th day of September, 2001.