

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35708
Docket No. SG-35663
01-3-99-3-599**

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, C. D. Brosette, and C. D. Francis, for payment of 20 hours pay each, at the time and one-half rate, account Carrier violated the current Signalmen’s Agreement, particularly Rule 1, the Scope Rule, when on January 28, and 29, 1998, it allowed supervisory personnel to perform work covered by the Agreement and deprived the Claimants of this overtime opportunity. Carrier File No. K0698-5103. General Chairman’s File No. BRS 987601. BRS File Case No. 11037-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.

At the outset, we note that the instant claim is a companion to the claim set forth in Third Division Award 35707.

On the dates in question, January 28 and 29, 1998, Signal Inspector G. L. Lansdale, Signal Foreman C. D. Brossette and Signalman C. D. Francis were assigned to work at Murphy Road in Sachse, Texas.

Signal Supervisor C. R. Jones was also at the crossing on the dates in question. While there, he is alleged to have violated the Scope Rule of the parties' Agreement by adjusting gate mechanisms, installing straps on AAR terminals, setting up Micro Aid event recorder with lap top and assisting in the installation of gate arms, removal of the old cantilever signals and testing. There is no dispute these tasks fall within the coverage of the Signalmen's Scope Rule.

In support of the claim, the Organization submitted a written statement by Claimant Lansdale. In the statement, Lansdale indicates he was at the Murphy Road work site when Supervisor Jones performed the tasks described above. He states he advised Jones that he (Jones) was doing scope covered work and would be confronted with a claim if he continued doing it. According to Lansdale, Jones replied, "I have to get the job done. We just don't have the people anymore."

The Carrier's defense rests on Supervisor Jones' version of what his role was during the time in question, as he relates in the following statement:

"The work you are claiming I did at this location is incidental work to my role as supervisor. I was at this location with Gang #820 and Signal Inspector Greg Lansdale to cut over the new crossing signals. As Supervisor it is my responsibility to see the work is done safe, efficiently, and the crossing is installed properly and according to the rules and standards set forth by the Railway, FRA, States and Cities where applicable. In fulfilling these responsibilities to insure signal equipment is installed properly, it sometimes becomes necessary for me to perform test, walk the track pulling bonds, check recorders, etc. My participation in the performance of these duties is used as a tool for training and instruction. The experience of the persons I am working with plays a big roll (sic) in how much I participate in the performance of these duties."

Supervisor Jones did not deny that he performed the work identified by the Organization; i.e., adjusting gate mechanisms, installing straps on AAR terminals, setting up Micro Aid event recorder with lap top and assisting with the installation of gate arms, removal of old signals and testing. We are not persuaded these tasks were merely incidental to his supervisory role at the work site, and there is no evidence or explanation as to how or when he used his performance of those tasks to train and instruct the Claimants. No contention is made that the Claimants were unqualified or lacked experience to do the work safely and efficiently. Jones certainly had legitimate supervisory duties to perform at Murphy Road, but, on this record, we find he did more than that.

The record lacks evidence supportive of the Organization's contention that Supervisor Jones' performance of work covered by the Signalmen's Scope Rule on the dates in question warrants payment of 20 hours' overtime compensation to each of the Claimants. Some remedy is warranted, however. Accordingly, because Jones' performance of the work in question was more than just minimal and/or incidental, we find each Claimant is entitled to five hours' pay at the straight-time rate.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 19th day of September, 2001.