

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36399
Docket No. SG-36678
03-3-01-3-217**

The Third Division consisted of the regular members and in addition Referee Ann S. Kenis when award was rendered.

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

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 R. A. Shelton for payment of seven hours at the time and one-half rate. Account Carrier violated the current Signalmen’s Agreement, particularly Rule 46, when on January 29, 2000, Carrier required the Claimant to perform ordinary maintenance installing new signal batteries at three separate locations and then refused to pay the Claimant overtime for providing this service. Carrier’s File No. K0600-5399. General Chairman’s File No. BRS001346. BRS File Case No. 11501-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 was assigned to the monthly rated position of Signal Maintainer position No. 849. The instant dispute developed on Saturday, January 29, 2000 when the Claimant was called out to replace batteries at intermediate signals at three locations in Bowie County, Texas, following a snowstorm and power outage.

The issue in this case is clearly drawn. The Organization contends that the work performed by the Claimant was ordinary maintenance work for which the Claimant should have been paid overtime. The Carrier, on the other hand, takes the position that the work performed on the day in question was an emergency, in which case no overtime pay was warranted.

The applicable Rules are as follows:

“RULE 46

- (a) Inspectors, Foremen, Signal Shop Foremen, Signal Maintainers, Relief Signal Maintainers, and Special CTC Maintainers will be paid a monthly rate. The monthly rates for such positions are based on 213 hours per month. Future wage adjustments shall be made on the basis of 213 hours per month. 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.
- (b) Except as provided herein the monthly rate shall be for all work subject to Rule 1 of this Agreement on the position to which assigned during the first five days of the work week, Monday to Friday, inclusive. Also, the monthly rate shall be for other than ordinary maintenance and construction work on Saturdays.”

The provisions of Rule 46 do not provide for any additional compensation for emergency service performed on Saturday. Additional compensation is paid only if “ordinary maintenance” is performed. The Organization as the moving party in this dispute therefore had the burden of establishing that the disputed work was “ordinary

maintenance” so as to entitle the Claimant to overtime pay. Based on our review of the record, we find that the Organization has not sustained its evidentiary burden.

The test in these cases is not simply the nature of the work itself but all the attendant circumstances surrounding the work. As explained in Third Division Award 20866:

“On the merits, Petitioner argues that ‘what is ordinary is dictated by the nature of the work’, irrespective of the surrounding conditions. As a matter of logic, we cannot agree. For, if the attendant conditions and circumstances governing the performance of the work are unusual and extraordinary in themselves, the work in issue becomes extraordinary. That in essence is the crux of this case.”

The Board finds the foregoing reasoning just as applicable in the instant case. While it is clear that changing batteries is a part of ordinary signal maintenance, the circumstances here were far from “ordinary.” The work performed by the Claimant was necessitated by emergency weather conditions that required immediate attention to facilitate operations and to ensure the continuing viability of the signal system during a power outage. Under these circumstances, the Organization failed to establish that the work on January 29, 2000, qualified as “ordinary maintenance” that could have been easily scheduled for a regular work day. Accordingly, the claim must 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 Third Division

Dated at Chicago, Illinois, this 18th day of February 2003.