

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37539
Docket No. SG-37609
05-3-02-3-726

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman 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:

Claim on behalf of J. M. McDonald, for 8.25 hours at his time and one-half rate of pay, account Carrier violated the current Signalmen's Agreement, particularly Rules 3, 8 and 46, when it required the Claimant to perform the service of providing and retrieving documents via Carrier's computer system outside of his normal working time from June 29, 2001, until July 16, 2001. Carrier's File No. K06015549. General Chairman's File No. 01-092-KCS-185. BRS File Case No. 12256-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.

On January 3, 2001, the Claimant was informed that he could no longer submit his electronic time sheets during normal working hours. The Claimant was instructed to complete his paperwork either before or after his normal bulletined working hours. The Claimant asserted that in 29 years he had never been given such instruction. He further requested overtime for the performance of the work.

The Organization pursued this claim as a violation of several Rules, most particularly Rule 46. It argues that the Claimant had normal bulletined hours and the Carrier has no right to demand work performed after those hours. The Organization argues that when the Claimant is forced to do Signal Maintainer work after the hours of service, overtime is proper and should be paid. As this has historically been done during normal working hours, the refusal to permit the Claimant to perform his paperwork during his eight hour day violates the Agreement.

Rule 46 of the Agreement states, in pertinent part, that:

- “(a) . . . Rules applicable to hourly rated employees shall apply to all service on Sunday and to ordinary maintenance or construction work on holidays or 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 Carrier supported its position by noting that the claim was for “all work” performed except for “ordinary maintenance and construction work on Saturdays.” Although the dispute was enlarged to include e-mails, bulletins and other work, the Carrier held that the Claimant was compensated at the monthly rate for “all work” and that meant all work. It noted that the performance of paperwork during normal work hours was not “standard practice” and further,

that the payment of overtime for working before or after normal bulletined hours was not Rule supported. Overtime was not contemplated for the performance of paperwork because it was not "ordinary maintenance and construction work" under Rule 46 performed either on a holiday or a Saturday.

The Board concludes that the Claimant is a monthly rated employee and under Rule 46 is only due overtime if he works more than the number of hours on which the monthly rate is based; e.g. if he works "ordinary maintenance or construction work on holidays or Saturdays" and for any work performed on a Sunday. Rule 46, supra, is clear on its face and does not contemplate payment under the instant circumstances. Rule 46 clearly states "all work . . . on the position to which assigned during the first five days of the work week. . ." The Board finds no language that restricts the work to normal work hours as the Organization argues. Nor do we find any probative evidence to conclude a joint practice existed with such an interpretation. An application of the language of this Rule requires that the claim 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 23rd day of June 2005.