

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40951
Docket No. SG-40015
11-3-NRAB-00003-070075**

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin 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. E. Abbott, M. R. Allen, H. G. Altstatt, Jr., T. J. Asher, B. A. Beason, L. D. Beisley, G. M. Bordelon, D. E. Bullington, C. Charles, J. B. Cowling, P. W. Darity, L. B. Degner, J. P. Dykes, B. Fletcher, C. E. Frank, J. S. Harmon, J. D. Harwell, T. A. Hogan, W. A. Johnson, M. J. Kalczynski, T. N. McBroom, J. R. McCrary, Jr., J. M. McDonald, D. R. McKnight, K. L. Miller, M. A. Mitchell, B. J. Newton, N. Nicholas, G. L. Peace, L. Pigeon, Jr., K. W. Pool, D. J. Riggs, B. J. Robertson, J. Rutledge, R. A. Shelton, W. C. Shepard, R. M. Shoenbroek, K. P. Simmons, J. W. Smith, Jr., R. H. Thornton, J. C. Timmons, E. Townsend, T. Webb, F. D. West and T. E. White IV, for 1,800 hours straight-time and 1,440 hours overtime to be divided proportionally to the time in which each employee was available for service and not utilized, account Carrier violated the current Signalmen’s Agreement, particularly Rule 1 - Scope, when it used contractors (Posey Signal) to perform the Scope covered work of maintaining generators used to supply power to signal equipment and other Scope covered work beginning September 28, 2005 and continuing through October 15, 2005 between MP 556.00 through MP 786.10. Carrier’s File No. K06066057. General Chairman’s File No. 05-114-KCS-185. BRS File Case No. 13729-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.

It is undisputed that the Carrier used the forces of an outside contractor to install and fuel generators at many signal and grade crossing locations along its right-of-way in the area generally described as western and southwestern Louisiana. This was in response to the devastation wreaked on that area by Hurricane Rita.

Hurricane Rita followed Hurricane Katrina by some three weeks and made landfall on the Gulf Coast very near the border between Louisiana and Texas on September 24, 2005. Rita was the fourth-most intense Atlantic hurricane on record and exceeded Katrina in damaging force. Both Texas and Louisiana were declared federal disaster areas as a result. The electrical power distribution grid was essentially wiped out in the area in question and caused the need for electrical generators to be used to provide power to the Carrier's signal system for approximately three weeks.

The Organization's claim is premised on the Scope Rule of the effective Agreement. However, it is not necessary to dwell on the Scope Rule because the record clearly establishes that emergency circumstances existed on a widespread basis throughout the claim period. It is well established that genuine emergency circumstances provide carriers with the ability to deviate from the strict application of labor agreements for the purpose of coping with the devastating effects of a proven emergency. See, for example, Third Division Award 37529, where similar circumstances existed on a much smaller scale for a comparable period of time.

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Given the state of the record, the claim will 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 24th day of March 2011.