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**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 31957
Docket No. SG-32246
97-3-95-3-48

The Third Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Southern Pacific Transportation Company**

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Pacific Transportation Co. (SP):

Claim on behalf of A.B. Simonson for payment of three hours at the straight time rate, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when it allowed or permitted a management employee to perform train tests with the use of track shunts on November 19, 1993. Carrier's File No. SIG 94-22. General Chairman's File No. SWGC-827. BRS File Case No. 9473-SP."

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.

In this case we have a penalty claim which was presented on behalf of a Signal Maintainer who was regularly assigned to a position which worked from 7:30 A.M. until 4:00 P.M. with a 30 minute meal period. The scheduled workweek of Claimant's position was Monday through Friday. The situation which formed the basis of this claim occurred between the hours of 12:00 Noon and 2:00 P.M. on Friday, November 19, 1993, when a Trainmaster, a non-agreement management employee, placed shunt wires on rails to alter signal aspects while conducting efficiency tests of train crews who were operating in the territory. There is no disagreement between the parties relative to this basic fact situation.

The respective parties and positions in this case are the same as are found in Third Division Award 31816 issued by this Board on December 26, 1996. The Board's examination of the issues involved were fully examined and set forth in Award 31816 and need not be repeated here. Rather, the conclusions reached in Award 31816 are, by reference, incorporated in this Award. The Board again concludes that in circumstances such as existed in this case the placement of shunt wires for the purpose of conducting efficiency tests is work which accrues to Signalmen.

However, as to the monetary remedy here sought, there is no evidence that Claimant suffered any actual loss of work opportunity inasmuch as he was on duty and under pay at the time the disputed work was performed. Therefore, the three hour penalty claim as presented is rejected. Carrier should be aware, however, that Scope Rules are negotiated instruments which are meant to be complied with and that repeated, flagrant violations of such Rules could well result in the assessment of compensatory damages to enforce compliance with the Rules.

AWARD

Claim sustained in accordance with the Findings.

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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 March 1997.