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**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37538
Docket No. SG-37122
05-3-02-3-82

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(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 R. A. Shelton for payment of three hours at the time and one half rate, account Carrier violated Rule 46 of the current Signalmen's Agreement when it failed to pay the Claimant for overtime service performed on Saturday, October 28, 2000, at Texarkana, Texas. Carrier File No. K06015436. General Chairman's File No. 01-012-KCS-185. BRS File Case No. 11899-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 dispute centers on the nature of the work performed. The Carrier refused overtime pay arguing that the Claimant did not perform ordinary maintenance. The Organization alleges violation of Rule 46 wherein the Claimant performed ordinary maintenance on a Saturday. Under Rule 46, if a monthly rated employee did perform ordinary maintenance on a Saturday, overtime pay is due. If the work performed is not ordinary maintenance, then the work is compensated within the employee's monthly rate of pay.

The burden of proof is on the Organization to demonstrate that the work performed was ordinary maintenance. It asserts that the Claimant followed a contracted rail grinder that was reshaping the ball on the rail. The Organization argues that on that Saturday the Claimant was out doing "regular maintenance . . . cleaning out metal shavings, caused by the rail grinder putting metal shavings into an insulated joint."

The Organization did not prove in this record what constituted ordinary maintenance. The overtime was claimed not only for cleaning metal shavings, which may or may not be ordinary maintenance, but also for "repair damaged trackwire (sic) at 3rd St caused by section truck derailling." The Carrier asserted without rebuttal that "repairing continuous ringing flashers can in no way be construed as ordinary maintenance; in fact it would be considered an emergency by FRA guidelines." Because the Carrier's material assertion was not rebutted, it stands as fact.

As such, the record evidence does not support the work performed as "ordinary maintenance on a Saturday." As it was not "ordinary maintenance," the claim must be denied for lack of proof.

AWARD

Claim denied.

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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.