

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 37672  
Docket No. SG-36619  
05-3-01-3-147**

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

**PARTIES TO DISPUTE:** (Brotherhood of Railroad Signalmen  
(BNSF Railway Company)

**STATEMENT OF CLAIM:**

**"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Burlington Northern Santa Fe Railroad Co. (former Burlington Northern Railroad):**

**Claim on behalf of J. L. Hale for payment of 96 hours and 45 minutes at the time and one-half rate. Account Carrier violated the current Signalmen's Agreement, particularly Rule 45, when Carrier deducted overtime pay from the Claimant for time claimed during July and August of 1999. Carrier File No. 34 00 0007. General Chairman's File No. C-4-2000. BRS File Case No. 11524-BN."**

**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.

When the Carrier processed its payroll for the second half of August 1999, it determined that the Claimant, a Signal Construction Crew Foreman working out of Ottumwa, Iowa, had claimed overtime of 14.5 hours for that period. Upon further examination, it then discovered that he had also reported 84 hours and 25 minutes of overtime for the first half of July and the first half of August. The Carrier concluded the Claimant was not entitled to any of the pay claimed under Rule 45 (M) and proceeded to recover 96 hours and 45 minutes at overtime rates from his paychecks on August 30 and September 9, 1999.

On October 22, 1999 the Organization submitted this claim on behalf of the Claimant contending that he was entitled to the overtime pay at issue under Rule 45 (M). The Carrier's denials asserted that the claim was lacking in specifics as to times and dates of violation; failed to identify any individual who performed the work on which the claim was based; and that Rule 45 was inapplicable because the Claimant had performed no work.

Rule 45 (M) reads as follows:

"If a Construction Crew Foreman supervises a crew which is required to work more than eight (8) hours per day for three (3) or more days in the first five days of the work week, such foreman shall be paid overtime at his hourly rate for actual time worked in excess of 8 hours per day by the crew he is supervising that week."

It is clear from the record that as a monthly rated Signal Construction Crew Foreman, the Claimant was responsible for the supervision of hourly rated Signalmen on his Signal Construction Crew and entitled to overtime for work performed by the crew in excess of eight hours in a day.

The record indicates that during July and August 1999, one Signalman assigned to the Claimant's crew was removed from his supervision and assigned to perform work at another location. While so assigned, the Organization states that he worked more than eight hours daily for three days in the first five days of his

workweek, although neither the identity of that person nor the dates he worked are a matter of record.

The parties dispute whether that employee was or was not under the Claimant's supervision, but it is clear that the Claimant did take a call from him reporting his time and in turn forwarded it to payroll for processing along with all other Signalmen on his crew.

Upon review of the record in its entirety and following careful consideration of the arguments advanced, the Board finds the claim to be lacking in merit. As the moving party, the Organization must establish by persuasive evidence that the critical conditions of eligibility under the Rule have been satisfied in order to support its claim. In this instance the Carrier states without challenge that the Claimant's crew did not work more than eight hours per day for three or more days in the first five days of the workweek. Nor has there been any showing that the Claimant supervised the one Signalman removed from his crew who apparently did work in excess of eight hours at another location beyond obtaining his time and forwarding it to payroll along with that of the rest of his crew. That activity does not appear to satisfy either the letter or spirit of the governing Rule under which more than 96 hours of pay is claimed.

Lastly, the Organization cites evidence suggesting that Foremen in the past have been paid overtime under the provisions of Rule 45 (M) when Signalmen on their crews are working away from the gang. The Carrier takes exception to those arguments, contending that historically Foremen have been allowed to claim overtime only when physically working on the same project as the Signalmen involved. If we were required to reach that question it would not be easily resolved based upon the record before the Board. It is, however, unnecessary to address the Organization's contentions in this regard because the language of Rule 45 (M) is plain and unambiguous and, therefore, requires no resort to past practice in aid of interpretation. To be entitled to overtime, the Claimant must have supervised a crew whose hours of service fell within the parameters set forth in the Rule. The Claimant's situation clearly did not satisfy those conditions. Accordingly, the claim must be denied.

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**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 21st day of December 2005.**