

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 37750  
Docket No. SG-38067  
06-3-03-3-513

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:

Claim on behalf of T. R. Miller, for 3 hours at time and one-half his straight time rate including skill pay, account Carrier violated the current Signalman's Agreement, particularly Rules 2, 10 and Rule 12 from the former AT&SF Agreement, when on September 11 and 13, 2002, Carrier used Signalmen off the signal gang to work overtime with the tie renewal and resurfacing gang instead of using the Claimant who was the Signal Maintainer assigned to the territory. Carrier's File No. 35 03 0003. General Chairman's File No. 02-1-01-BNSF-33-K. BRS File Case No 12725 BNSF.”

**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 Claimant is a Signal Maintainer at Oklahoma City, Oklahoma. On September 11 and 13, 2002, planned construction work involving tie replacement and resurfacing was underway throughout the territory for which he was responsible for maintaining signal equipment. A Signal Construction Gang consisting of three Signal Department employees had been assigned to follow the Maintenance-of-Way Construction Gangs to ensure that no signal equipment was damaged as their work was completed.

On October 23, 2002, the Organization submitted this claim on behalf of the Claimant contending that the Carrier violated Rules 2, 10 and former ATSF Rule 12 when it used a Relief Signal Maintainer and two Signalmen off of the Signal Construction Gang instead of utilizing him on overtime.

The Carrier's denial of the claim on December 4, 2002 stated in part as follows:

"Your claim is denied because no violation occurred. The tie renewal and resurfacing gangs were performing planned construction work. These type projects are in progress throughout the BNSF system installing or replacing ties, ballast and or other track related items.

... The assigned work for the signal construction members was to follow the tie renewal and resurfacing construction gangs as they progressed through the territory. The BNSF is not obligated to assign the Signal Maintainer to this type of work that had been assigned to and performed by the member of the signal construction crew."

Rule 2 relied upon sets forth the description of the Signal Maintainer's work. Rule 10 establishes overtime rates for time worked before and continuous with "a regularly assigned work period," a fact pattern not presented by the claim. Former ATSF Rule 12 is entitled "CALLS (Procedures)." Subsection (a) of the Rule addresses call procedures for filling vacancies. It has no application to this dispute. Subsection (b) of the Rule treats with trouble calls outside of assigned hours on an assigned territory. It is likewise inapplicable. Subsection (c), however, does apply to the claim. It reads as follows:

"When employes assigned to a signal gang are required to work overtime, the immediately available and qualified senior man or men in the signal gang shall be given preference to such overtime work. Signal

gang employees will not be considered "immediately available" unless they are working at or in the immediate vicinity of the point of overtime work, or if for call service, they can be located promptly."

The Claimant appears to have no quarrel with the right of a Signal Construction Gang working at straight time in his territory, but lays claim to related overtime. In this instance, pursuant to Rule 12 (c) the three Signal Construction Gang employees assigned to follow the Maintenance-of-Way Construction Gang performed the inspection and related services during their regular work hours and, as required by Rule 12 (c) were properly assigned the contiguous overtime which the Claimant now seeks. As conclusively established by prior Awards of this Division, Signal Maintainers are not entitled to overtime work under the circumstances presented. See, e.g., Third Division Award 35410. ("The overtime work in question properly accrued to the signal gang employees who were on site performing the same work during their regular tour of duty.")

Based upon application of the controlling Rule to the facts of this case and consistent with prior Third Division Awards addressing analogous claims, the Board concludes that the claim must 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 21st day of March 2006.