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**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37865
Docket No. SG-38027
06-3-03-3-468**

The Third Division consisted of the regular members and in addition Referee Robert Richter when award was rendered.

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

STATEMENT OF CLAIM:

- "1. Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Burlington Northern Santa Fe Railroad.
2. Claim on behalf of J. D. Bachus, for 11 hours at one and one-half times his straight time rate of pay including skill pay, account Carrier violated the current Signalmen's Agreement, particularly Rules 2 and 10, and former ATSF Rule 12; when on August 16, 19, 21, and 26, 2002, and September 3, 5, and 6, 2002, it used a relief signal maintainer and two signalmen off a gang to work overtime on maintenance following a tie and surfacing gang on the Claimant's assigned territory instead of calling and using the Claimant. Carrier's action deprived the Claimant of the opportunity to perform the overtime work. Carrier's File No. 35 02 0071. General Chairman's File No. 02-089-BNSF-33-K. BRS File Case No. 12724-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.

On September 20, 2002 the Organization filed this claim. The claim was filed for four days in August. The claim before the Board includes three claim dates in September. Those dates cannot be considered by the Board.

The facts in this case reveal that the Claimant was assigned as a Signal Maintainer on the dates in question. During the claim period a Tie Renewal and Resurfacing Gang performed planned construction work on the Claimant's territory. Two Signalmen and a Relief Signal Maintainer were assigned to the Track Gang to insure the integrity of the signal system. On the dates in question the three signal employees performed overtime in connection with the work of the Track Gang.

The Organization claims that the Claimant should have been called to perform the overtime work.

The Carrier cited numerous Awards that support its position that the overtime properly accrued to the signal employees who were on the work site performing those same duties during the normal work hours.

The Organization failed to prove that the Agreement was violated.

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 1st day of August 2006.