

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 32343  
Docket No. MW-32049  
97-3-94-3-417**

**The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.**

**(Brotherhood of Maintenance of Way Employees  
PARTIES TO DISPUTE: (  
(Kansas City Southern Railway Company**

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

- (1) The Agreement was violated when the Carrier assigned outside forces to provide flag protection for bridge contractors while they worked on a bridge on December 1, 2, 3, 4, 7, 8, 9, 10, 11, 14 and 21, 1992 [Carrier's File 013.31-320(554)].**
- (2) The Carrier also violated Article IV of the May 17, 1968 National Agreement and the December 11, 1981 Letter of Understanding when it failed to furnish the General Chairman with advance written notice of its intention to contract out said work and failed to make a good-faith effort to reduce the incidence of contracting out scope covered work and increase the use of Maintenance of Way forces.**
- (3) As a consequence of the violations referred to in Part (1) and/or (2) above, Machine Operators D. E. Everett, G. Bickham and Foreman R. Oney shall each be allowed pay at their respective straight time rates for an equal proportionate share of the one hundred ten (110) man-hours expended by the outside forces.”**

**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.

This dispute involves Carrier's alleged contracting of flag protection work without prior notice to the Organization. In its claim filed on January 27, 1993 the Organization states that retired employee Mr. Gore provided flag protection work while contractors "worked on a bridge." Carrier responded that it had no knowledge of any bridge work being performed at the time noted in the claim and asked for specifics. The Organization responded by identifying the location as Mile Post T-149. In Carrier's July 7, 1993 denial it states that it has no record of Gore working for it or flagging for anyone. Carrier suggested that Gore may have been working for the contractor, since in the past it has given names of retired employees to contractors who have asked about hiring someone with experience. It basically denied that it contracted flag protection work to anyone at that time. No additional information was forthcoming from the Organization other than its arguments concerning Carrier's responsibility to give notice and assign this scope-covered work to its employees under various rules.

This case suffers from the failure of the Organization to prove the alleged facts of the claim. As found by the Board previously on this property in Third Division Award 31605:

"...As the moving Party, the Organization bears the overall burden of persuasion and the initial obligation to prove every material fact necessary to make out a prima facie claim, especially after Carrier flatly challenges the accuracy of alleged operative facts giving rise to the claim. The Organization failed to meet that burden of proof on this record."

We adopt the above rationale in dismissing this claim. See also Third Division Award 31603.

**AWARD**

**Claim dismissed.**

**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 13th day of November 1997.**