

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32094
Docket No. MW-31617
97-3-93-3-622**

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (former Seaboard
(Coastline Railroad Company)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it assigned outside forces (off-duty police officers from Pelham and Alabaster, Alabama) to perform maintenance work of flag protection at road crossings near Pelham, Alabama on the Lineville Subdivision of the Atlanta Division on Wednesday, May 27 and Thursday, May 28, 1992 [System File 92-147/12(92-1058) SSY].**
- (2) The Carrier also violated Rule 2, Section 1 when it failed to confer with the General Chairman and reach an understanding prior to contracting out the work in question.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, the two (2) most senior Maintenance of Way employees who hold Rank 1-Foreman seniority in the Maintenance of Way Track Subdepartment, Group A on the Atlanta-Waycross Seniority District, who may either be out of work or working in a lower rank on account reduction of forces, shall each be compensated at the Track Subdepartment, Group A Rank 1 pro-rata rate of pay for an equal proportionate share of the thirty-two (32) straight time hours and at the appropriate time and one-half rate for an equal proportionate share of the ten (10) overtime hours expended by the outside forces in the performance of the subject work.”**

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 May 27 and 28, 1992, the Carrier hired outside forces, Police Officers, to perform maintenance work of flag protection at road crossings near Pelham, Alabama.

The Organization filed the instant claim contending that the work of flagging at road crossings is contractually reserved to the Maintenance of Way and Structure Department employees. The Organization argues that work of this nature has customarily, historically and traditionally been performed by Maintenance of Way employees. Furthermore, the Organization argues that the Claimants in this case were willing and able to perform the work in question.

The Carrier denied the claim contending that the city closed the intersection where resurfacing work was being performed by Carrier forces and the Carrier points out that the city insisted that qualified Vehicle Traffic Controllers be used to detour traffic. The Carrier argues that the Police Officers did not perform flag protection, but merely kept vehicle traffic from entering the Carrier's work area.

The Board reviewed the record and finds that the Organization failed to meet its burden of proof. Although the Organization cited a number of Rules, it did not adequately demonstrate how those Rules were allegedly violated. Moreover, the activity engaged in by the Police Officers cannot be construed as maintenance work which would normally accrue to BMWWE represented employees.

Because the Organization has not met its burden of proof, 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 9th day of July 1997.