

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43481  
Docket No. MW-44314  
19-3-NRAB-00003-170383**

**The Third Division consisted of the regular members and in addition Referee David P. Twomey when award was rendered.**

**(Brotherhood of Maintenance of Way Employees Division -  
IBT Rail Conference**

**PARTIES TO DISPUTE: (**  
**(CSX Transportation, Inc.**

**STATEMENT OF CLAIM:**

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

- (1) The Agreement was violated when the Carrier assigned outside forces (AMEC contractors) to perform Maintenance of Way work (painting ties) on the Berkshire Subdivision beginning at QB 125.0 and moving in an eastward direction beginning on August 3, 2015 and continuing (Carrier’s File 2015-194519 CSX).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant M. Brothers shall now be compensated ‘... (320) hours at the overtime rate of pay including all credits and benefits due to the Claimant at his respective rate of pay....’”**

**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 Claim in this case is on behalf of Mr. M. Brothers of the BMW craft on the Albany Division alleging that the Carrier used outside forces on August 3, 2015, and continuing, to paint ties on its Berkshire Subdivision. We find that the record established that the work in question involved painting ties or markers for culverts in order for M&W employees to identify the culvert structure and also for M&W flags and pilots to identify the possibility of water in order to stop herbicide applicators from unintentional pollution of water. B and B foreman Jesse Dewe provided a statement dated June 21, 2016 as follows:

“I’ve worked on the B and B Department from 1998. Every year this department paints railroad ties over culverts. Also inspect the culverts and input the information into computer. Every year on the whole Albany Division. Thank you, J. A. Dewe. 925974. B and B foreman. 6 Q 73  
Sent from my iPhone.”

Mr. Dewe’s statement established that the work was performed by past practice prior to the effective date of the June 1, 1999 System Agreement. Mr. Dewe’s statement and statements from five other employees establish that the painting work continued to be performed on the property over the years. We find that the work of painting ties as performed in this case is reserved to the Maintenance of Way craft by the third paragraph of the Scope Rule of the June 1, 1999 Agreement.

The statement of Mr. M. Brothers, which included statements he had taken from other employees, dated December 29, 2015 documented the work performed by the outside contractors on August 3, 2015. His “and continuing” claims simply have not been established in the record before this Board and are denied. To preserve the integrity of the Agreement we shall sustain the claim for the total hours expended by the outside forces on August 3, 2015 that of 16 hours, at the Claimant’s straight time rate of pay. Strictly limited to the record before us, we see no reason to impose the penalty of overtime pay in this case.

**AWARD**

**Claim sustained in accordance with the Findings.**

**ORDER**

**This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.**

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**By Order of Third Division**

**Dated at Chicago, Illinois, this 1st day of March 2019.**