Award No. 2956
Docket No. 2802
2-NYNH&H-EW-'58

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Thomas A. Burke when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 17, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Electrical Workers)

THE NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

(a) That employes in the Electric Transmission Department were unjustly damaged and the provisions of the current agreement were violated when the Carrier elected to use employes of the Utilities Line Construction Company to perform repair work on the Carrier's lines at Greenwich, Connecticut.

(b) That accordingly the Carrier be ordered to compensate the employes so damaged as follows:

W. Shanley	—8 hours time and one-half—2⅓ hours double time
R. Cooper	—8 hours time and one-half—2⅓ hours double time
K. McDonald	—8 hours time and one-half—2⅓ hours double time
J. Rutkesky	—8 hours time and one-half—2⅓ hours double time
J. Haynes	—6 hours time and one-half—2⅓ hours double time

EMPLOYES' STATEMENT OF FACTS: Linemen W. Shanley, R. Cooper, J. Haynes and Helpers K. McDonald and J. Rutkesdy, hereinafter referred to as the claimants, are employed by the New York, New Haven and Hartford Railroad Company, hereinafter referred to as the carrier, in the electric transmission department and assigned to Foreman Morrell's gang.

The claimant linemen are regularly assigned to perform work in connection with the construction and maintenance of the carrier's transmission lines and the claimant helpers are regularly assigned to help linemen in the performance of their duties.

working nearby, and who were used in the emergency, consisted of a foreman, six electric linemen and three helpers.

To have transported the four men from their location each of New Haven to Greenwich would have required two to three hours. It was the considered judgment of the department head that the situation could best be met by the use of the larger utilities company line gang who were immediately available, and to hold the men at New Haven in reserve in event of another emergency arising.

Prior to entering into a formal agreement with the utilities line construction company in October, 1955, for the contracting out of work required in connection with the proposed highway construction in Connecticut and New York, conference was had with Mr. C. J. Regan, then general chairman of the electrical workers. He was advised that we were unable to locate additional qualified linemen to accomplish the required work without contracting it. He was also advised that if he could locate fifteen to twenty qualified men for us to employ, we would not have to let out this work but he stated that he was unable to do so, and he was agreeable to our employing outside forces provided his men did not lose any work. Both parties agreed that it would be permissible to use these outside forces on overtime work only in cases of emergency. Carrier submits that the situation in the instant claim came well within the definition of "emergency."

In presenting the claim on the property, the employes indicated that the claimants:

W. Shanley —lineman
R. Cooper —lineman
K. McDonald —helper
J. Rutkesky —helper
J. Haynes —lineman

were members of construction gang headquartered at New Haven and presently working east of New Haven at S.S. 79, Mill River Junction.

Carrier would point out that one of these claimants, Lineman Haynes, had previously been detached from this gang and was working with a wrecker at East Bridgeport. On the date of the claim he was on duty with the wrecker until 6:15 P.M. and therefore was not available.

In view of all of the above, carrier requests a denial decision.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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.

The parties to said dispute were given due notice of hearing thereon.

At 2:04 P.M., on July 23, 1956, a contractor working on the construction of the Connecticut Turnpike adjacent to railroad property, set off an overcharge of dynamite in blasting operations.

The blast damaged the carrier's lines, causing among other things, complete interruption of train service for approximately one hour.

Claimants were employed in the Electric Transmission Department of the carrier.

Other employes in the Electric Transmission Department were ordered to make necessary repairs. Also sent to the scene to make repairs were employes of the Utilities Line Construction Company who were not employes of the carrier.

There is nothing in the agreement which would permit the carrier to bring in outside help to do the work of Electric Transmission Department employes.

The carrier relies on an oral agreement or understanding with the former general chairman of the Electrical Workers providing that the carrier could let out the work of relocating lines due to the construction of the Connecticut Turnpike, providing the electrical workers did not lose any work.

But that agreement did not cover the work in the instant case. This was not work in connection with the relocation of lines because of the construction of the Turnpike. This was work which arose because of damage caused to carrier's property due to the act of a private contractor not on railroad property. But even assuming that this so called oral agreement did cover the facts here, an oral agreement or understanding cannot abrogate or modify the provisions of a written agreement entered into by the parties after deliberate and serious negotiation in collective bargaining. The parties hereto do not agree as to the precise terms of the so-called oral agreement. This demonstrates the danger of modifying written agreements with oral understandings.

In Award 5057 of the Third Division it was said:

> "It is a fundamental rule of contract construction that alleged oral understandings cannot be permitted to vary the terms of a written document."

In Award 1559 of the Second Division, it was said:

> "It is fundamental that work covered by a contract with employes cannot be contracted out to others. That principle is the foundation upon which collective bargaining agreement rights vest."

For these reasons, we think the claims should be allowed. We have many times held that the overtime rate is applicable only to time actually worked and that the pro rata rate is the measure of value to work lost. (Awards 1771, 1772, 1803 and 2802.)

AWARD

Claims sustained but at pro rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 25th day of September, 1958.