

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Livingston Smith, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
BOSTON AND MAINE RAILROAD**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood:

(1) That the Carrier violated the effective agreement when they assigned a General Contractor to make alterations on the Mystic Wharf Branch temporary trestle at Rutherford Avenue, Charlestown, Mass., on Saturday, September 29, 1951;

(2) That Work Equipment Operator Purdy; Foreman Carpenter H. Kennedy and the five (5) senior Carpenters in his crew, be paid at their respective time and one-half rate of pay in the amount of two (2) hours and forty (40) minutes because of the violation referred to in part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: In connection with the construction of new arterial highways by the Commonwealth of Massachusetts, certain excavation work was performed near the Carrier's track facilities on the Mystic Wharf Branch.

In order to support and protect its track facilities during the construction of the arterial highways, it was necessary to construct a temporary trestle. The Carrier assigned its Bridge and Building forces to construct the temporary trestle and to perform all maintenance and alteration work on it.

On Saturday, September 29, 1951, it was necessary to remove the walk and fence on the temporary trestle in order to facilitate the placement of a steel girder on a structure being erected by employees of the Lehigh Construction Company. The contractor's forces performed all the work necessary in removing the walk and fence, including the operation of a crane to handle the walk and the fence.

No effort was made to call the Carrier's forces to perform the removal work. The walk and fence were not replaced on the trestle structure by the contractor's forces, and the trestle remained in service over the week-end without the fence and walk as an integral part of the trestle structure.

The Carrier's forces were assigned to replace the fence and walk on Monday, October 1, 1951.

The State was fully at liberty to do, or have done, anything it desired with its own property, subject only to the right of Carrier to have and maintain its tracks on the State owned trestle.

Petitioner's claim in this docket is in connection with an action taken by the State of Massachusetts, involving property owned by said State, and over which Carrier had no control whatsoever.

Petitioner has no dispute over any action taken by Carrier for Carrier took no action. Carrier did not order any one to perform any work coming within the scope of Petitioner's agreement. Carrier was not requested by the owner of the trestle (State of Massachusetts) to perform any work thereon, or to make any changes.

No possible violation of the agreement between the parties hereto could have taken place under the circumstances.

(Exhibits not reproduced.)

OPINION OF BOARD: We are here concerned with the claim of seven employes for pay at their respective rates for a period of two hours and forty minutes by virtue of Respondent's alleged violation of the effective Agreement in permitting alterations to be made on a trestle by individuals not covered thereby.

The work complained of was relative to removing a walkway and guardrail from a temporary trestle in or near the city of Boston. This trestle was designed to carry tracks of Respondent during highway construction, the installation of same having been done by the engineering forces of the Carrier.

It is evident from the record that prior to the date in question this trestle had at all times been maintained and altered by the Bridge and Building forces, of which claimants were members.

The Organization asserts that the Respondent owned the trestle and that, inasmuch as the removal of the walkway and guardrail was Maintenance of Way work, claimants here and not employes of the contractor should have been called.

The Respondent denied ownership of the facility in question, stating the same was constructed and maintained on a reimbursable basis under a contract with the Commonwealth of Massachusetts and that the contractor for the highway construction had caused removal of the walkway to facilitate placement of steel girders.

This walkway and guardrail were removed on Saturday, September 29, 1951, and were replaced on Monday, October 1, 1951, said replacement work being performed by the Maintenance of Way employes.

It is the opinion of this Board that ownership of the trestle in question is immaterial. In agreeing to construct and maintain same, the Respondent made available certain work to the Maintenance of Way employes. The removal of the walkway and guardrail was done by others without the knowledge or consent of the Respondent and was not work that was essential to the Carrier in the conduct of its business. Neither was the work of removal by the contractor performed at the request of the Respondent.

Respondent had agreed that all alterations and maintenance work should be performed by the Maintenance of Way employes. They replaced the walkway and guardrail. No benefit accrued to the Carrier. All benefits, if any there were, inured to this organization.

This claim is without merit.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Carrier did not violate the effective Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 18th day of September, 1953.