SPECIAL BOARD OF ADJUSTMENT NO. 285

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
vs
READING COMPANY

Award No. 16
Case No. 16

STATEMENT OF CLAIM:

1. The Carrier violated the effective Agreement when on June 4 and 8, 1959, between the hours of midnight and 8:00 a.m., it assigned outside parties to the work of installing "I" beams between the columns of the catenary at Wayne Junction, Philadelphia, Pennsylvania.

2. Crane Operator John Bravo and his Laborer William Jenkins be now compensated an equivalent number of hours, at their time and one half rate, as was worked by the Crane Operator who was not covered by the Scope of this Agreement on the dates in question.

OPINION OF BOARD:

At the opening of the hearing before the Board the parties agreed to abandon the question of timeliness which previously had been raised.

Because of overhead highway construction being carried on by the State of Pennsylvania, it became necessary for the Carrier to move several of its catenary columns and crossbeams which support the electric wires for the use of Carrier's electric M.U. Trains in this area. These columns and crossbeams were relocated at other points nearby.

Employees in the Carrier's B and B forces dug the holes, poured concrete and erected all of the involved eight columns at the new locations. Crane Operator Bravo, with the assistance of Laborer Jenkins, used at Model #30 Burro crane to dig holes for and to erect these catenary columns. By use of this crane he also unloaded from a car the four crossbeams which were to be positioned on top of the newly erected columns. Three of the crossbeams were 35 feet long and one was 71 feet in length. All of the work thus far described was performed on the day trick while electric current was flowing through the overhead wires.

The installation of these four crossbeams on top of the catenary columns was performed on the nights of June 4 and 8, 1959, by the use of a McMyler crane brought from Port Richmond and operated by Carrier employees regularly assigned to this crane. These employees are represented by the Firemen and Oilers Organization. The evidence does not indicate which of the four beams involved were erected on either of the two nights in question. As soon as the crossbeams were properly located on top of the catenary columns, they were bolted to the columns by Carrier's electricians who are covered by a different labor agreement. Electricians also installed the electrical wiring involved in this relocation project. Painters in the B and B forces painted the columns up to a height of 15 feet. By agreement between the Carrier and the M of W Organization, electricians painted the columns

above the 15 foot level and also the crossbeams, but two B and B painters were paid on a standby basis. It appears that the crossbeam installation was conducted at night because it was deemed prudent to shut off the electric current while this operation was being performed.

The present claim is based upon the contention that the erection or positioning of the four crossbeams represented work within the exclusive jurisdiction of M of W employees and that the Carrier therefore violated the subject Agreement by assigning such work to employees not covered by the scope thereof. The petitioner contends that the Carrier itself has always considered that catenary structure work belongs to M of W forces covered by the Agreement, as evidenced by the fact that such forces were used to do practically all of the construction work in the subject instance and the fact that they also have performed the same kind of work at other locations.

The Carrier denies that M of W employees have exclusive jurisdiction over the work here in dispute. The Carrier cites numerous instances in which catenary structure work has been handled by McMyler or other cranes operated by non-schedule employees in the past. The Carrier states that it has been its policy to use the particular equipment best suited to the particular operation involved and also notes that the Organization has cited only one prior instance in which employees subject to its Agreement were used to perform the type of work here in question. Management concedes that M of W employees have performed the type of work here in dispute in the past but contends that they were used for such work only in instances in which the equipment assigned to M of W employees was available and was adequate for the particular task to be performed.

Management further asserts that the Model #30 Burro crane to which Claimant Bravo and his laborer were assigned did not have sufficient capacity to lift and position the 71 foot crossbeam, although it is conceded that the crane's capacity was sufficient to adequately handle the 35 foot beams. The Organization contends that this crane, if properly operated to take into account the particular conditions involved, could have safely lifted and positioned the 71 foot beam.

The evidence convinces us that the Carrier made a good faith and informed judgment that the Model #30 Burro crane had insufficient capacity to safely lift and position the 71 foot beam in the subject instance. Management has the responsibility for observing safety precautions in the conduct of its operations. We do not think the evidence offered by the Organization is sufficient to warrant setting aside the Carrier's judgment on this point.

The Organization notes, however, that even if its claim with respect to the 71 foot beam is rejected on grounds of safety, the Carrier has not urged the safety factor with respect to the ability of the Model #30 Burro crane to lift and position the 35 foot beams. We therefore are confronted with the question concerning whether under the subject Agreement M of W employees have exclusive jurisdiction over work of this character where the equipment operated by such employees is available and adequate to handle the job.

Since the Agreement does not expressly reserve this work to the covered employees, we must rely upon past practice in deciding the question. Careful review of the evidence presented leads to the conclusion that the practice is not in favor of the petitioner. Of the previous instances cited by the parties, the great majority represented the use of equipment operated by employees other than those covered by the subject Agreement. The fact that on the instant occasion the bulk of the catenary construction work was performed by M of W employes is not sufficient to establish a consistent practice of using such employees to perform the particular type of task here in dispute. On the basis of the record submitted in this case, we conclude that the work in question is not exclusively reserved to the employees covered by the M of W Agreement.

AWARD:

Claim denied.

(s) Lloyd H. Bailer
Lloyd H. Bailer, Chairman

(s) A. J. Cunningham
A. J. Cunningham, Employee Member

(s) H. F. Wyatt, Jr.
H. F. Wyatt, Jr., Carrier Member

Philadelphia, Pa.
March 17, 1961.