

SPECIAL BOARD OF ADJUSTMENT NO. 541

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
ERIE-LACKAWANNA RAILWAY COMPANY

STATEMENT OF CLAIM:

1. The Carrier violated the existing Agreement and Understanding when they assigned the work of handling track material and continuous welding of rails, welding and grinding of said rails for use on former Erie Railroad to Contractor, the National Cylinder Gas, Division of Chemetron Corporation, whose employees hold no seniority under this effective Agreement between the former Erie Railroad Company and the employees represented by the Brotherhood of Maintenance of Way Employees.

2. That the following Arc Welding Foreman, Welders, Equipment Operators, Crane Engineers, and Trackmen:

Arc Welding Foremen: T. G. Richardson
R. L. DeVere

Welders: Peter Quattrone
W. Giffen

Equipment Operators: T. Seaton
H. Dalaba
L. Jobe
T. B. Doyle
H. W. Rogers
O. E. Burgess

Crane Engineers: John Abbott
A. B. Cooper

Trackmen: L. Piscatelli
J. J. Topor, Jr.
J. R. Hippert
T. F. Finlan
William Linderman

be allowed pay at their straight time rates for an equal proportionate share of the total man hours consumed by the Contractor's forces in performing this work of handling track material, such as rails, welding of rails, cropping of rails, and grinding of rails, that is referred to in part one of this claim.

FINDINGS:

This dispute stems from Carrier's use of an outside firm, The National Cylinder Gas Company, to weld new and relayer rail in continuous strings of approximately 1,500 feet in length. The claim is that a substantial portion of that work, specifically the welding, grinding and handling of the continuous rails, belongs to Maintenance of Way Employees.

We agree that Maintenance of Way men should have been called upon to perform the disputed work, particularly since they have done the same kind of work in the past, at Salamanca, New York, on former Erie Railway property, and the work appears to be of the type traditionally associated with their craft. Carrier's bare assertion that similar work had not been properly performed by its employees on a prior occasion does not provide a valid basis for subcontracting the work without Petitioner's consent, particularly when the contention is not supported by detailed facts and was not made during discussion of the claim on the property.

No persuasive reason has been advanced for assigning the specific work in controversy to an outside firm and we accordingly will sustain paragraph 1 of the claim.

With respect to the monetary feature of the claim, paragraph 2, it appears that the Third Division of the National Railroad Adjustment Board has sustained substantially the same claim against Carrier in a case brought by another District of the Brotherhood of Maintenance of Way Employees that represents employees in a different area of the property. In that Decision, Award 16693, the Third Division allowed compensation to a number of employees in order to remedy the situation.

Carrier was required to make payments by Award 16693 and it would unfairly harass and penalize Carrier to require it to make additional payment, particularly since there would be no question of a second payment if the employees were not represented by two different Districts of the Brotherhood of Maintenance of Way Employees on the property. Under these circumstances, the second paragraph of the claim will be denied.

AWARD:

Paragraph 1 of claim sustained; paragraph 2 of claim denied.

Adopted at New York, N.Y., August 13, 1969.

/s/ Harold M. Weston
HAROLD M. WESTON, NEUTRAL

/s/ A. J. Cunningham
EMPLOYEE MEMBER

/s/ R. A. Carroll
CARRIER MEMBER