

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 effective Agreement by assigning Carpenters to inspect track for settlement at Steamburg, N.Y., during the period September 20, to September 23, 1965, when the Peter Kiewit Son's Company, under contract with the Erie-Lackawanna Railroad Company, installed a concrete pipe culvert under the track.

2. Trackmen and Equipment Operators D. M. Helene and S. S. Grabowski be paid for all hours involved from September 20, 1965 to September 23, 1965, inclusive, due to other than Maintenance of Way Trackmen performing this work of inspecting track for settlement, which work rightfully belongs to the Maintenance of Way Track Department.

FINDINGS:

Carrier used an independent contractor to install a concrete pipe culvert in connection with a track relocation project. Two Carpenters were assigned to inspect installation of the pipe culvert to make certain that the contractor had carried out his work in accordance with specifications.

Petitioner's complaint is that the Carpenters were also instructed to watch for track settlement and to notify the Project Engineer or Extra Gang Foreman immediately if they found that settlement had occurred. Carrier denies that the Carpenters were assigned to protect against track settlement.

We are not persuaded by the record that Carrier called upon Carpenters to perform substantial watching or other protective duties in regard to possible track settlement. The only evidence submitted by Petitioner consists of a joint statement by the two Carpenters that "We xxx were to check tunneling operations. If trouble developed our instructions were to call Mr. Hurling and Mr. Letro" and a statement by the Local Chairman to the same general effect. These statements, in the absence of additional details, do not constitute substantial evidence that Carrier was using Carpenters to perform Claimant's work. We find nothing improper in any employee being instructed to report back dangerous conditions he incidentally observes in the course of his primary duties.

Awards 3638 and 4077 of the Third Division and Award 29 of Special Board of Adjustment No. 293 are not in point since, unlike the present case, they concern situations where evidence showed that substantial maintenance of way work was performed by other classifications.

AWARD: Claim denied.

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

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

/s/ A. J. Cunningham
ORGANIZATION MEMBER

/s/ R. A. Carroll
CARRIER MEMBER