

SPECIAL BOARD OF ADJUSTMENT NO. 285

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

vs.

READING COMPANY

Award No. 10

Case No. 10

STATEMENT OF CLAIM:

1. That the Carrier violated the Agreement by not assigning to its track forces the work of removing and restoring its track at the Indian Head Coal Company on June 30, July 2 and 3, 1958.

2. That one track foreman and ten furloughed laborers on Sub-Division "B" of the Shamokin Division be now paid three days pay each at their respective rates of pay because of this violation of the Agreement.

OPINION OF BOARD:

In 1958 Carrier granted permission to Indian Head Coal Company to install a water line under its track on a branch adjacent to the colliery's property. Carrier advised, however, that its own forces were to remove and restore the track, and that Indian Head was to give information concerning when the work was to commence. Through some misunderstanding, the colliery removed the track with its own personnel, installed the water line, and was in the process of restoring the track before Carrier discovered what was going on. Upon learning what had taken place, Carrier stopped the colliery from proceeding further and completed the track restoration with its own forces.

There is no showing of bad faith by the Carrier vis-a-vis the subject Agreement. However, Management is responsible for work that is performed on its property. The track work in question clearly is reserved by the labor contract to M of W employees. The Organization is not in a position to enforce this contract against the colliery. We are therefore constrained to hold the Carrier liable for what took place here.

Carrier asserts that furloughed employees, for whom claim is made, would not have done the involved work in any event, since employees on the active payroll were scheduled to perform it. The question as to which individuals are to be granted compensation where a violation has occurred is only incidental to the claim, however.

We are not entirely satisfied that the amount of time for which pay is requested was actually consumed by the colliery's forces in performing the track work involved. The claim should be sustained only to the extent of time spent on the subject track work by the colliery's personnel.

AWARD: Claim sustained to the extent indicated above.

(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., June 26, 1959