

SPECIAL BOARD OF ADJUSTMENT NO. 541  
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES  
AND  
ERIE-LACKAWANNA RAILROAD COMPANY

STATEMENT OF CLAIM:

"(1) The Carrier violated the Agreement when it assigned the work of grading, hauling stone and applying 'blacktop' for roadway and parking facilities at the Croxton Piggy-Back Facility to the Clinton Asphalt Company. (Carrier's file 'MofW Item 75')

"(2) The Carrier further violated the Agreement when it assigned or permitted other than B&B forces to perform the work of operating the roller used 'in grading and building roadway and parking lot for piggy-back station at Croxton, N. J.' (Carrier's file 'MofW Item 77').

"(3) That Bridge and Building Foremen: J. Sabo, Al Buck, J. Raimondo, Ralph DiPietro and Bridge and Building Leading Carpenters, Carpenters and Carpenter Helpers:

N. Demarco	W. Lebo	P. Marcia	S. Brooks
F. Demarco	M. L. Potaki	T. Cataldi	W. Tarnowski
J. Delbicchio	D. C. Spagnuolo	S. Manorek	W. Gordon
V. Deseva	L. I. Wyble	C. Dechert	J. Jurusik
W. Hansen	L. J. Wyble	R. Schuckman	T. Knapp
E. Parmi	A. Barber	F. Fahrenholz	T. Keletta
J. Flynn	T. Perruzzi	T. Jubniewicz	J. Klimkiewicz
T. Iacone	A. Alaimo	T. Dominica	T. Gerrick
B. Karwinski	A. Dalton	S. Kemble	J. McNamara
J. Condon	S. Kloby	J. Petronico	S. Polatz
H. Schaefer	D. Ormination	D. Sullivan	S. Pietraszewski
A. Charko	M. Syner		

be allowed pay at their respective straight-time rates for an equal proportionate share of the total man hours consumed by the contractor's forces in performing the work of grading, hauling of stones, applying blacktop as referred to in part (1) of this claim.

"(4) Carpenter Jesse Sisco be allowed pay at his straight-time rate for the same number of hours consumed by outside forces in performing the work referred to in Part (2) of this claim."

FINDINGS:

As part of its campaign to obtain substantial piggy-back business and thereby improve its financial condition, Carrier undertook to develop coordinated piggy-back terminal facilities at Chicago, Illinois and Croxton, New Jersey. On the strength of this construction program, T. O. F. C., Inc., a trucking concern, agreed to "handle" all piggy-back operations at both terminals and solicit and expand piggy-back business. The deadline set by both parties for completion of the Chicago and Croxton terminals was June 15, 1961.

Carrier used an independent contractor, with Petitioner's consent, for the Chicago work and the terminal there was completed by the target date. At Croxton, Carrier first started work with its own forces, but in April, 1961, it became fearful that the job would not be completed on time and let the work to an independent contractor.

It is Petitioner's complaint that this use of an outside contractor at Croxton without its consent breached the Agreement. We disagree. The record amply establishes, in our opinion, that time was of the essence in this matter and that it was highly important for Carrier's business that both facilities be ready by June 15, 1961 for coordinated operations. Carrier showed good faith by using its own men to start work at Croxton and we are not in a position, on the basis of the facts contained in this record, to decide that Carrier's decision to switch to an independent contractor was wrongful. Under the circumstances here presented, we do not regard the action complained of to be a threat to, or violation of, the Maintenance of Way Agreement. The claim will be denied.

AWARD:

Claim denied.

Dated at New York, N. Y., this 25th day of August, 1964.

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

/s/ Arthur J. Cunningham  
ORGANIZATION MEMBER

/s/ R. A. Carroll  
CARRIER MEMBER