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 allowing other than Bridge and Building employes to paint Rutherford Station beginning April 11, 1964 and continuing.

2. The Carrier shall now reimburse Bridge and Building employes Henry Weiss, Nick Robando, Michael Giannaccaro, Charles Frustace and Willie Nichols, at their respective pro rata rates, for their proportionate share of an equal number of hours as was involved in the painting of this Rutherford Station by outsiders, beginning April 11, 1964 and continuing until completed.

FINDINGS: Petitioner complain that Carrier permitted civic organizations to paint the Rutherford, New Jersey Station, although five Bridge and Building employes, the claimants herein, had been furloughed. The station was owned and operated by Carrier and there is no evidence that it was being abandoned. It is equally clear that such work belongs to the employes under the Agreement and that it was performed with Carrier's knowledge.

While the work in controversy helped beautify a building located in the City of Rutherford and therefore may have been prompted by consideration of civic pride, it certainly benefited Carrier and trespassed on rights protected by a collective bargaining agreement. That trespass is not justified by the fact that no consideration was furnished by Carrier for the work or that management would not have performed the work if it had involved any cost. We are not at liberty to consider the equities or Carrier's financial position and, since Claimants manifestly were deprived of work that they were entitled to perform, are constrained in this specific factual situation to sustain the claim.

AWARD: Claim sustained.

Dated at New York, N. Y. this 29th day of October 1968.

_____/s/Harold M. Weston._____
        HAROLD M. WESTON, Neutral

_____/s/A. J. Cunningham_____   _____/s/R. L. Carroll_____
    ORGANIZATION MEMBER   CARRIER MEMBER