

SPECIAL BOARD OF ADJUSTMENT NO. 541

Parties to Dispute:

Brotherhood of Maintenance of Way Employees
Erie Lackawanna Railway Company

STATEMENT OF CLAIM:

1. Carrier violated the effective Agreement by allowing a Contractor to construct a bunk room building at Hornell, New York, for the exclusive use of Erie employees of the Transportation Department.
2. B&B Department employees, as identified below, were denied the right to perform this work and should now be compensated for an equal proportion of the hours of work performed by Contractor's employees;

Carpenters

R. R. Reynolds
F. L. Brown
R. L. Henry
M. C. Hull
C. S. Andrews
D. Massi

Plumbers

E. I. Snalt
J. C. Schwartz
C. E. Sleggs
W. Maxson
R. A. Dapice

3. Carrier shall also pay each Claimant 6% interest per annum on the monetary allowance accruing from the initial claim date until paid.

FINDINGS:

The substance of this claim is that Carrier's own employees should have been used to construct a two-story wood frame building at Hornell, New York. The building was designed to provide suitable lodging facilities for Carrier's train and engine employees. It was constructed by Railroad Roadside Motels, Inc. on land owned by Carrier but leased to the builder.

Ordinarily, the work of constructing buildings on a carrier's property belongs to its maintenance of way employees, unless the buildings are not to be used for railroad purposes or the necessary manpower, expertise or equipment is not available or outside help is required to meet emergency situations or time schedules. The facts of each case concerning the construction of railroad facilities by outside contractors must be scrutinized to determine the rights of the parties.

In the present case, there is no indication that the lease and contract were designed to circumvent Carrier's obligations under its collective bargaining agreements. Nor does it appear that Railroad Roadside Motels, Inc. is under Carrier control and is not in full control of the property it has leased.

We are satisfied that Railroad Roadside Motels, Inc. is an independent contractor with considerable experience and skill in constructing and operating lodging facilities.

These factors, together with the important consideration that there is no evidence that Claimants were not continuously employed on a full-time basis while the building was under construction, persuade us that there has been no violation of the applicable Agreement in this situation.

Under the specific circumstances of this case, the claim will be denied. Cases involving such minor construction as remodeling of office space and partitions are to be distinguished from the present situation.

AWARD: Claim denied.

Adopted at Cleveland, Ohio, October 16, 1974.

/s/ H. M. Weston
H. M. Weston, Chairman .

/s/ R. A. Carroll
R. A. Carroll, Carrier Member

/s/ A. J. Cunningham
A. J. Cunningham, Employee Member