

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Don Hamilton Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
ILLINOIS CENTRAL RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it assigned the work of removing the top of Lost Gap Tunnel to employes of a contractor who hold no seniority rights under the Agreement. (Carrier's File 134-241-444 Spl. Care No. 312 MofW.)

(2) Machine Operators A. C. Turman, B. M. Turman, R. L. Foreman, C. Parker, D. H. Davis, L. L. Hurst, C. L. Slade and K. L. Neese each be allowed pay at their respective straight time rate for an equal proportionate share of the total man-hours consumed by contractor's forces in performing the work referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: In an article appearing in the January 1964 issue of the "ILLINOIS CENTRAL MAGAZINE," the subject tunnel was described as:

"'Lost Gap Tunnel,' said Roy L. Harwood, division engineer for the Mississippi Division,' is a long brick barrel built right through the middle of a hill'."

It was also described as "the circular brick tunnel," as the "gunbarrel-shaped right of way," and "the 426-foot long tunnel whose top clearance was 16 feet, 8 inches above rails at the tunnel portals."

Within that same issue of "ILLINOIS CENTRAL MAGAZINE" it was reported:

". . . After the bids were reviewed, the contract was awarded to Railroad Maintenance & Construction, Inc., of Irving Texas, as the lowest bidder.

* * * * *

The contractor's bulldozers, tractors and road scrapers began to arrive at Lost Gap early in September. All of the equipment, bought new for this job, came to the tunnel area over the Illinois Central rails from Springfield, Illinois. Les Hambrick, Vice-President of Railroad

The work on this project was started early in September and completed on November 20, 1963.

On October 8, 1963 the union filed a claim alleging violation of the agreement. The company declined the claim at each step of the appeal on the basis the work was properly let to a contractor. The agreement with the Brotherhood of Maintenance of Way Employees dated June 1, 1962 is by reference made a part of this Statement of Fact.

(Exhibits not reproduced.)

OPINION OF BOARD: The parties herein litigated a very similar claim before the Board which resulted in denial Award 11493. The basic contentions of the parties are the same in each case. We are persuaded that Award 11493 is proper and in point and should be followed in this case.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 14th day of December 1966.