

Award No. 11493

Docket No. MW-10341

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Preston J. Moore, 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 the Black Rock Tunnel, forming it into a cut and sloping the banks of the cuts that approach the tunnel to a contractor whose employees hold no seniority under the effective agreement.

(2) The following named employees each 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 work referred to in Part (1) of this claim:

"B&B Foreman — C. G. Thurman

Assistant Foreman — W. C. Green

B&B Carpenters — Clive Crawford, Bennie Craig and O. E. Rogers

B&B Carpenter Helpers — Charles Coe and C. H. Hearuin

On and Off Track Dirt Handling Machine Operators — J. Draffen, L. Bell, W. Campbell, L. M. Spears, C. F. Jones, A. C. Franklin, R. R. Higgs, A. Allen, J. Egbert, B. G. Bryson, and C. F. Chappell."

EMPLOYEES' STATEMENT OF FACTS: The Carrier assigned the work of removing the top from the Black Rock Tunnel, approximately two hundred feet in length, making it into an open cut and sloping the embankments for a distance of approximately five hundred feet on each side of track, to a contractor whose employees hold no seniority in the Maintenance of Way Department under the effective agreement.

existed. It was, therefore, vital to do the work as quickly as possible and as skillfully and efficiently as possible.

There is no basis on which this claim can be sustained. Carrier's files show that work of much lesser magnitude has been contracted for many years, before and after the current agreement became effective. The Third Division of the Board has held in many instances that where a Carrier has ordinarily contracted work it may continue to do so; see Awards 3839, 5487, 5747, 6251, 6299, 6706, 7600, 7765, and 7806. The Carrier is not required to obtain expensive equipment for which it has no general use; see Award 5151. The Board has ruled that where the time element is important the Carrier is justified in contracting work; Awards 7805 and 4671. Work of this magnitude could not have been adequately performed by Maintenance of Way employees who do not have the necessary skills; Awards 2338, 2819, and 5151. The claim should be denied.

All the data in this submission have been presented to the Employees and made a part of the question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: The Carrier let a contract to remove the top of a tunnel about 200 feet in length. The tunnel was connected to a cut. The work was to be done without interfering with trains using the tunnel. The petitioner contends that the Scope Rule reserved the work to them. The Carrier contends that it did not have the necessary equipment and that it was not possible to purchase such equipment. They also allege the magnitude of the job and the special skills needed justified the contracting out of the work.

The work performed consisted of blasting through rock or sandstone and the removal of rock and debris.

The Carrier lists equipment which was used by the contractor and shows the cost as \$278,870.00. The Carrier may have had part of the equipment. It still would have been necessary to purchase a substantial amount of equipment which it might not use again.

The other contentions will not be considered since this factor alone is sufficient reason for the Carrier to contract the work to outside forces.

For the foregoing reason, we find the Agreement was not violated.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees 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 11th day of June 1963.