



Award Number 17701

Docket Number TE-16470

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

James Robert Jones, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
SOUTHERN PACIFIC COMPANY—TEXAS AND LOUISIANA
LINES**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Southern Pacific Company (Texas and Louisiana Lines), that:

1. Carrier violated and continues to violate the Agreement between the parties when it requires or permits persons not covered by said Agreement to perform station work accruing to the agencies at Needville, Texas, Bay City, Texas, New Gulf, Texas, Wharton, Texas, El Campo, Texas, Louise, Texas, Edna, Texas, Victoria, Texas, Port Lavaca, Texas, Nixon, Texas, Cuero, Texas, Yorktown, Texas, Beeville, Texas, Karnes City, Texas, Floresville, Texas, Kenedy, Texas, Scott, Louisiana, Rayne, Louisiana, Crowley, Louisiana, Iota, Louisiana, Eunice, Louisiana, St. Martinville, Louisiana, Jeanerette, Louisiana, Abbeville, Louisiana, Erath, Louisiana, Kaplan, Louisiana, Gueydan, Louisiana, Alexandria, Louisiana, Cheneyville, Louisiana, Eola, Louisiana, Franklin, Louisiana, Paradis, Louisiana, Raceland Junction, Louisiana, Schriever, Louisiana, Napoleonville, Louisiana, Houma, Louisiana, Thobadaux, Louisiana, Breaux Bridge, Louisiana, Bayou Sale, Louisiana, Midland, Louisiana, Jennings, Louisiana, Merman-tau, Louisiana, Welsh, Louisiana, Lake Arthur, Lake Charles, Sulphur, Vinton and Deridder, Louisiana.
2. Carrier shall be required to restore this work to employees under the Agreement.
3. Carrier shall be required to compensate:
 - (a) F. Kubes, Jr., Agent, Needville; W. E. Nichols, Agent, Bay City and F. C. Korenek, Agent-Telegrapher, New Gulf, for one day's pay at the rate of the individual station, for each employee named herein, each day Monday through Friday, beginning Friday, May 22, 1964 and continuing until the agency work removed has been restored.
 - (b) C. W. Harvey, Agent-Telegrapher, Wharton, for one day's pay at the Wharton rate, each day Monday through Friday, beginning Monday, May 25, 1964 and continuing until the agency work removed has been restored; Mrs. J. R. Tomlinson, Relief Agent-Telegrapher, Wharton, for one day's pay at the Wharton rate, each Saturday, be-

SPT's operations, including those operations it performs on contract basis for Carrier, are appropriately authorized by Interstate Commerce Commission or applicable state utility regulatory body in the states in which it operates.

Prior to March 1, 1964, the billing, collection, and local accounting for revenues for all SPT shipments were performed by Carrier forces by contract under which SPT paid Carrier for performance of the services. March 1, 1964, the SPT cancelled this portion of the contract with Carrier and began the performance of the billing, collection, and accounting for its revenues from freight shipments by its own forces. Subsequent to that date, the change to performance by SPT forces was made point-by-point until finally at no point on Carrier's line was any of this work performed by Carrier's forces. Carrier's station forces were instructed that they were to perform no service for the SPT account.

Claims were made by the Committee of Transportation-Communication Employees' Union that at each of the locations listed in Item 1 of the Petitioner's notice to the Board of intent to file ex parte a dispute, Carrier had violated the agreement with that Organization when the SPT determined to perform its own billing, collection and accounting work and Carrier's agency forces were instructed that they were no longer to do this work. Claims for payment of a day's pay for the regular agents assigned at the various points listed were made by the Committee as detailed in Item 3 of the petitioner's notice.

The individual claims as they were presented were declined and conferences were held on each between the General Chairman and Carrier's Manager of Personnel. At the Organization's request, extension of time for appeal was granted and the claims reach the Board after having been handled in required manner on the property.

(Exhibits Not Reproduced)

OPINION OF BOARD: Prior to March 1, 1964 Petitioner handled the billing, collection, and local accounting for revenues for all Southern Pacific Transport (SPT) shipments. This service was secured through contract between SPT and Carrier and for which SPT paid Carrier for performance of the services. On March 1, 1964, the SPT cancelled this portion of the contract with Carrier and began the performance of billing, collection, and accounting for its revenues from freight shipments by its own personnel. Afterward, the change in performance of this billing, accounting, and collection service was gradually relinquished by Carrier's forces and it was assumed by SPT personnel until finally at no point on Carrier's lines was any of this work performed by Carrier's forces.

The one point in this case in which there appears to be no dispute concerns damages. The general rule is that damages for breach of contract are limited to the pecuniary loss necessarily sustained by the injured party. The Supreme Court has affirmed that rule in *Perry vs. U.S.*, 294 U.S. 330, 354, when it said: "The Plaintiff can recover no more than the loss he has suffered and of which he may rightfully complain. He is not entitled to be enriched." Petitioner has not suffered a loss in this case.

Petitioner contends that the work involved LCL (less than carload) freight and therefore the work of billing, accounting, and collection should have been performed by Carrier's forces. Carrier responds that the shipments are exclusively truck shipments which are under truck lines tariff,

billing and regulations. Carrier further contends that all LCL shipments under Carrier's billing and control, were, in fact, billed, receipted for, remitted by and accounted for by the same Carrier employees who had done so prior to the cancellation of the SPT contract. Carrier states that the only change in operations is that SPT now maintains its own accounting for the shipments moving on its own billing and in its own trucks.

Petitioner contends that the independent corporate status of the trucking company (SPT) from that of the Carrier is merely a subterfuge. Petitioner suggests that this Board should "pierce the corporate veil" because of inter alia the interlocking directorate of the Carrier and the trucking company. By piercing this corporate veil, Petitioner believes we should find that the work in dispute in the case was actually the work of the Carrier and not that of another company. Therefore, Petitioner contends, that by reassigning the work to personnel not covered by this Agreement, the Carrier thus violated the General Scope Rule.

Carrier acknowledges that the capital stock of SPT is wholly owned by Southern Pacific Company. However, Carrier states that SPT is an entirely separate entity with its own Board of Directors, officers and employees.

The general rule of law is that the parent corporation and its subsidiary are treated as separate and distinct legal persons even though the parent owns all the shares in the subsidiary and the two enterprises have identical officers and directors. This corporate veil might be pierced when: a) the respective enterprises are not held out to the public as separate enterprises; b) each corporation is inadequately financed; c) the business transactions, accounts and records of the corporations are intermingled; d) the formalities of separate corporate procedures for each corporation are not observed; and, e) where one corporation is under the dominion of another to the extent that a master-servant relationship is created making the acts of one in effect the acts of another.

We cannot find from the record sufficient reason to pierce the corporate separateness in this case. We find that the work in dispute here was not the work of the Carrier, but clearly the work of another company.

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 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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of January 1970.