NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 21263

THIRD DIVISION Docket Number CL-21169

Frederick R. Blackwell, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, (Freight Handlers, Express and Station Employes
(Indiana Harbor Belt Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7801) that:

1. Carrier violated the Agreement betweenthe parties when, effective November 16, 1973, without conference or agreement it caused, required and permitted the r-al of the work of janitor positions and the positions from the Scope at the Blue Island Bunkhouse, Melmse Park, Illinois.

2. Carrier shall compensate William A. Branson, furloughed janitor, a day's pay at the rate of his abolished janitor position, plus subsequent increases , commencing November 16, 1973 until the violation is corrected.

OPINION OF BOARD: The Claimant was furloughed in connection with the abolishment of four janitorial positions at the Carrier's Blue Island Station Bunkhouse, Melmse Park, Illinois. The abolishment of the positions and the resulting furlough are alleged to have violated the Scope of the Agreement, and the claim asks that the Claimant be paid from furlough date until the violation is corrected.

The parties agree that the work in dispute in this case was performed by clerical employes for many years prior to November 16, 1973, and that such work has been performed by persons not covered by the Clerks' Agreement after such date. The disputed work originated with the former NYC Railroad's use of the Blue Island Station Bunkhouse as the away-f-home living quarters for engine crews that were operating NYC trains in and out of the Blue Island Station. The clerical employes of the herein Carrier, the IHB Railroad, cleaned the bunkhouse, called the NYC train and engine crews, and transported them in an IHB automobile to and from necessary points at the station. Full time janitorial positions were established to perform this work. After the merger of the former NYC with the Penn Central Company in 1968, the Penn Central ran trains in and out of Blue Island as the NYC had done previously and the Penn Central crews used the bunkhouse. Clerical employes of the IHB performed the same duties in connection with the Penn Central crews that had been previously performed in connection with the NYC crews. Four janitorial positions at the bunkhouse were abolished on November 16, 1973, and since then the work assigned to these positions has been performed by an outside company. In these circumstances, the Employes allege that work belonging under the Scope of the Clerks' Agreement has been improperly removed therefrom by the Carrier.

The IHB's primary defense is that the disputed work did not belong to the IHB, and that the work belonged to the Penn Central Company which removed it from IHB jurisdiction effective November 16, 1973. The IHB further says that the work was thus not within the control of the IHB after such date and that the Scope Rule of the Agreement between the IRS and the Clerks' Organization does not apply to the work. The Employes did not make a factual challenge to this defense in the correspondence on the property; however, in their Submission, they argue that the defense should be rejected because the IHB was the property of the former NYC and is now the property of the Peon Central Company. From this it is further argued that the Penn Central Company, along with the IRS, was prohibited from removing work from the Scope Rule of the IHB Agreement, that the act of the Penn Central in giving the work to an outside company should be deemed to be the act of the IHB, and thus the IHB should not be treated as a separate company from the Penn Central in considering the alleged Scope violation.

The Employes submit three items of evidence and one authority, Award No. 17701, to support their *contentions.* One of the items is found in paragraph (e) of the Scope Rule which reads as follows:

> "(e) Employes promoted to official positions, including such positions on other New York Central System properties, to positions in offices or departments specified in Section (b) above or to positions specified in Section (c) above, shall continue to acquire seniority for displacement purposes only on the roster from which promoted, to be exercised as provided in Rule 35, if such position is abolished or if they fail to qualify." (Employes' emphasis)

Documentary evidence submitted by the Employes consist of a one-page extract from an Official Railway Guide (Ex. C) and a two-page extract from Moody's Transportation Manual (Ex. D). This evidence, according to the Employes, warrants the piercing of the "corporate veil" under the general rule of law spelled out in Award No. 17701:

> "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 of 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 co-ration 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." (Employes' emphasis)

The Carrier asserts that the Fmployes' evidence fails to prove facts which support the claim and asserts as well that the Fmployes made no denial on the property of the existence of the arrangements under which the IHB performed work for the former NYC and later for the Penn Central, The Carrier contends that the case is therefore controlled by the ruling in Award No. 5878 wherein this Board stated:

> "The Organization has the right to perform all of the work properly belonging to the Carrier which is covered by the Scope Rule. It also has the right to perform all work embraced by the Scope Rule done by the *Carrier* by agreement or arrangement with another carrier so long as the agreement or arrangement continues. It may not claim any right to the performance of work which was done because of agreement or arrangement with other carriers after discontinuance of the agreement or arrangement. no matter what was the motive or reason for the discontinuance." (Carrier's emphasis)

The Fmployes' evidence tends to show that there is a close business relationship between the two Carriers, but it does not persuade that the IHB and the Penn Central should be treated as a single entity in this dispute. The passage from the Scope Rule recognizes that IHB employes might have been promoted to official positions of the former NYC; and the documentary evidence tends to show that Penn Central has substantial and perhaps total ownership rights in the IHB. However, the evidence falls far short of establishing that the two Carriers are the same entity and the evidence also fails to meet the criteria in Award No. 17701. Those criteria are stated in the conjunctive, not the disjunctive; thus all of the criteria, (a) through (e), must be met in order to find the two companies to be a single entity, not just (e) as the Employes seem to suggest. Further, the Employes' evidence has no tendency to prove any of the criteria; indeed, criterion (a), that the "respective enterprises are not held out to the public as separate enterprises," is strongly negated by the Employes' Exhibits C and D. In Exhibit C, the IHB is shown as one of four different companies, comprising the former NYC System. Exhibit D represents the IHB as a railroad company which has direct ownership rights in tracks, motive power, and freight cars. It is observed in this regard that it is not at all uncommon in the railroad industry for one railroad company to own a majority or all of the stock of a second company, and yet the second company may maintain its separate identity by several means, including having its own operating department and filing its own ICC reports and state and federal tax reports. In addition, the Employes' Submission concedes that the former NYC could have assigned the disputed work to its own employes when the NYC crews first began using the bunkhouse at Blue Island Station. This being the case, the work at its inception clearly did not belong to the IHB and nothing of record reflects that this fact has changed over the years. The janitorial work arises solely because the IHB bunkhouse was used as living quarters by crews that never were and are not now employed by the IHB and the work therefore cannot be said to belong to the IHB. In the circumstances of this dispute, Award No. 5878 is applicable and the claim will be denied.

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;

Thet the Carrier and the Employes involved in this dispute are respectively Carrier and Employes 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: A. W. Paulos
Executive Secretary

Dated et Chicago, Illinois, this 15th day of October 1976.