Award No. 12691
Docket No. CL-12312

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Lee R. West, Referee

PARTIES TO DISPUTE:

UNITED TRANSPORT SERVICE EMPLOYES

SAVANNAH UNION STATION COMPANY

STATEMENT OF CLAIM: Claim that the Savannah Union Terminal Company violated on January 28, 1960, and continues to violate the agreement between the parties signed August 3, 1945, and amended thereafter when it abolished positions 14 and 15 which require the performance of janitorial duties in and around the station premises. As a result of the action taken by the Company, George P. Sabattie has suffered a loss of $144.00, Robert Hodge, $464.00; Frank Moore, $24.00; Rufus Williams, $576.00; Fred Wilson, $208.00; and Leo Moore, $80.00. Positions 14 and 15 be reinstated in the same manner and conditions prior to the violation of this agreement of January 28, 1960. All wage losses sustained by any and all employes affected by this violation, be paid from January 28, 1960 until this violation is corrected.

Claim that on February 1, 1960 the Savannah Union Station Company, in violation of the Scope Rule of the existing agreement between the parties to this dispute, did abolish positions 14 and 15 covering work to be performed within the Savannah Union Terminal. That claimants George P. Sabattie, Robert Hodge, Frank Moore, Rufus Williams, Fred Wilson and Leo Moore be awarded pay for all time lost as a result of the Company's breach of the existing agreement. That the Company be directed to re-instate positions 14 and 15 at Savannah Union Terminal.

EMPLOYES' STATEMENT OF FACTS: On January 28, 1960, the Savannah Union Station Company abolished assignments 14 and 15 which required the performance of janitorial services in and around the station area. A bulletin was posted on that date which set February 1, 1960 as the effective date of job abolishment. (See Exhibit A). On February 2, 1960, Mr. George Sabattie, Local Chairman, filed a grievance with Mr. A. S. Hubert, Station Master, through a letter of that date. (See Exhibit B). In essence his letter indicated that the work formerly performed by employes with this organization was now being performed by another group. He requested the removal of the new employes and restoration of job assignments which were abolished on February 1, 1960.

"That on February 1, 1960, the Savannah Union Station Company, in violation of the Scope Rule of the existing agreement between the parties to this dispute, did abolish Positions 14 and 15 covering work to be performed within the Savannah Union Terminal.

"That claimants George P. Sabattie, Robert Hodge, Frank Moore, Rufus Williams, Fred Wilson and Leo Moore be awarded pay for all time lost as a result of the Company's breach of the existing agreement.

"That the Company be directed to re-instate Positions 14 and 15 at Savannah Union Terminal."

As will be observed from the Organization's letter dated December 2, 1960, (COMPANY'S EXHIBIT "B") these two claims have been consolidated into one claim and Company's submission has been so based.

(Exhibits not reproduced.)

OPINION OF BOARD: The Savannah Union Station Company, hereafter referred to as Company, owns and operates a railroad station at Savannah, Georgia. The agreement between that Company and United Transport Service Employes covers janitors. Rule 2 of that agreement provides that duties of janitors "shall consist of cleaning in and around the station premises." For a period of some thirty (30) years, employes of the Company have performed all janitorial services at the station. This included janitorial service to office space in the station which the Company leased to others, as well as a janitorial services required in "running the train station."

On January 28, 1960, Seaboard Airline Railroad Company renewed a lease of office space from the Company. Janitorial Services for this leased office space, involving some 28 rooms, had previously been furnished by the Company, as stated above, and Company employes had always been used. However, under the terms of the renewed lease, Seaboard Airline Railroad reserved the right to arrange for janitorial services for the leased office space, thereby relieving the Company of this janitorial service obligation. Consequently the Company reduced its janitorial force by abolishing two janitors positions. The Employes contend that such action violates the agreement.

Employes argue that the Company, under the guise of abolishing a position, has transferred the work to someone not covered by the agreement, in violation of the agreement.

The Company conceded that all janitorial service that it is obligated to supply in the operation of the station belongs to the Employes by virtue of the agreement. However, it argues that janitorial services to office areas leased to other Companies, although within the station, is not a necessary part of its operation of the station, and is not encompassed by the agreement. Company even concedes its willingness to all Employes to perform any janitorial services which Company agrees to furnish within the leased office space. However, it argues that the agreement does not obligate it to reserve the right or obligation to furnish janitorial services to the leased office space so that Employes may have this work. We agree. Nothing in the agreement would indicate an intent to limit the Company in its right to lease the office space available, with or without the obligation to furnish janitorial services.

Employes point out that Seaboard Airline Railroad Company, the lessee

in this case, also owns ⅓ of the Company, which is the lessor. Employes assert that the Company is merely, by use of 2 separate legal entities, in which it is interested, transferring work from covered employes to non-covered employes. It asks this Board to pierce the corporate veil and treat the Company and Seaboard Airline Railroad Company as one and the same. However, Employes offer no evidence that the purpose or intent of the change in the lease was for the purpose of avoiding Company's obligations under the agreement. Nor does it explain how Seaboard Airline Railroad Company could be considered the alter ego of the Company since it only owns ⅓ of the Company and only occupies ⅓ of the managerial structure. Absent any evidence of such motive or of any benefit to the Company which would presume such a motive, we must deny the claim.

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 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 has not been violated.

AWARD

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 June, 1964.