

Award No. 2184
Docket No. 2099
2-PRR-TWUOA,CIO-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Adolph E. Wenke when the award was rendered.

PARTIES TO DISPUTE:

**THE TRANSPORT WORKERS UNION OF AMERICA, C.I.O.
RAILROAD DIVISION**

THE PENNSYLVANIA RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement W. J. Dougherty Jr. is not entitled to the seniority he claims on Coach Cleaner roster in seniority district number ten.

2. That the Claimant J. A. Ovelman who was displaced by W. J. Dougherty Jr. be compensated for all monies lost, beginning September 14, 1954, due to the aforementioned violation.

EMPLOYEES' STATEMENT OF FACTS: There is an agreement between the parties hereto, dated July 1, 1949, and subsequent amendments, copies of which are on file with the Board, and is by reference hereto, made a part of this Statement of Facts.

At Paoli, Pa., Philadelphia Division, Eastern Region, the Pennsylvania Railroad Company, hereinafter referred to as the carrier, employs a force of coach cleaners.

J. A. Ovelman is employed as a coach cleaner at the seniority point and will hereinafter be referred to as the claimant.

On August 6, 1949, a merger agreement was consummated between the parties to this dispute, combining all coach cleaner rosters on the Philadelphia Division, except the Paoli seniority district number ten, copy of which is submitted as employes Exhibit A.

Coach cleaners are employed at two seniority points on the Philadelphia Division. District number ten embracing the Paoli seniority point. District number two embracing all other seniority points on the Philadelphia Division. District number ten seniority coach cleaner roster is submitted as employes Exhibit B. Pertinent part of coach cleaner roster, seniority district number two is submitted as employes Exhibit C.

carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take any such action.

CONCLUSION

The carrier has shown that the applicable agreement has not been violated and that W. J. Dougherty, Jr., was properly granted seniority on the roster of coach cleaners in Seniority District No. 10.

Therefore, the carrier respectfully submits that your Honorable Board should deny the claim of the organization in this matter.

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

This claim, made in behalf of Coach Cleaner J. A. Ovelman, is for all monies lost, beginning September 14, 1954, because W. J. Dougherty, Jr., was improperly given seniority rights as a coach cleaner in seniority district No. 10, Paoli.

On carrier's Philadelphia Terminal Division, as of August 6, 1949, all coach cleaners' rosters were combined under seniority district No. 2 except at Paoli, which continued as seniority district No. 10. W. J. Dougherty, Jr., had seniority as a coach cleaner in district No. 2 as of May 14, 1951 and claimant in district No. 10 as of July 7, 1952.

On January 7, 1952 W. J. Dougherty, Jr., was employed by carrier on its then Philadelphia Terminal Division as an electrician's helper. Rule 3-A-1(c) of the parties' then effective agreement, provided, insofar as here material, that: "Employees entering the Helper class, * * * without previous service in the Laborer or Coach Cleaner classes, shall have the same seniority date in such lower classes as in such higher class." The purpose of this rule is self evident. The difficulty arises because of the use of the words "without previous service" in view of the fact that "Electrician Helpers" seniority extended over the entire Philadelphia Terminal Division whereas there were two seniority districts for coach cleaners thereon. We think the purpose of the language used is not to limit the rights of an employe with previous service but to preserve to such employe entering the helpers' class any seniority which he may have acquired prior thereto. Thus, in Dougherty's situation, since his seniority as a coach cleaner in district No. 2 was prior to January 7, 1952 it would not be affected thereby but as to district No. 10 his right to seniority as a coach cleaner would be January 7, 1952.

However, carrier did not place Dougherty's name on the coach cleaners' roster for district No. 10, Paoli, and Dougherty made no objection to its failure to do so. In view of the rules of the parties' then effective agreement we think Dougherty waived his rights thereto and consequently carrier was in error in permitting him to exercise it. See 3-F-1(a), 3-F-2 and 3-F-3 of the parties' then effective agreement.

In view thereof we have come to the conclusion that the claim should be allowed, as made, but not beyond November 26, 1954 when claimant returned

to work and remained thereon beyond December 29, 1954, when Dougherty was furloughed.

Award

Claim sustained as per findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **SECOND DIVISION**

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 18th day of July, 1956.