

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John W. Yeager, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

THE DELAWARE AND HUDSON RAILROAD CORPORATION

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that Carrier violates the current Clerks' Agreement by refusing to remove the name of Mr. Charles A. Basque from the Clerks' Roster and further violates said Agreement by permitting Mr. Basque to exercise displacement rights, and that

- (a) The name of Mr. Charles A. Basque shall now be removed from the Clerks' Roster, and that
- (b) Mr. Homer K. Martin shall now be compensated for all wage loss suffered by him due to being displaced by Mr. Basque, and that
- (c) All other employes who suffer monetary loss by virtue of the displacement afforded Mr. Basque shall be fully compensated for such loss.

EMPLOYES' STATEMENT OF FACTS: Mr. Charles A. Basque entered the service of the Carrier on July 4, 1942, and his name is listed as Number 397 on the Group 1 Saratoga-Champlain Division Clerks' Roster with that date.

Mr. Basque entered service as an Extra Clerk and worked various positions prior to entering Military Service. Upon returning from Military Service Mr. Basque re-entered the service of the Carrier and worked on various positions until being assigned to a position as Freight Checker at Glens Falls Freight Station on February 1, 1946 (Assignment CK-2:46). Mr. Basque never worked on the assigned position at Glens Falls but reported to the Carrier Representative at that point he was physically unfit for service at that time.

On October 1, 1946, Mr. Basque entered the service of the Champlain Spinners Silk Mill at Whitehall, New York, as a Porter and continued in the service of that employer until March 21, 1947, at which time he was laid off, or furloughed, due to lack of business.

Under date of April 11, 1947, the General Chairman of the Brotherhood requested that the name of Mr. Basque be dropped from the Clerks' Roster due to his having voluntarily left the service of the Carrier to accept outside employment. This request was denied by the Carrier and on May 5, 1947, Mr. Basque was permitted to exercise displacement rights and

Photostatic copies of exchange of correspondence between Dr. deRouville, Acting Chief Surgeon for the Railroad, and Dr. Sheldon are attached, marked Exhibit "C".

The Employees claim that this employe forfeited his seniority under Rule 4 of the Clerks' Agreement effective January 1, 1941, which reads as follows:

"RULE 4, CLERKS' AGREEMENT, EFFECTIVE JANUARY 1, 1941

Employes voluntarily leaving the service will forfeit all seniority and if they re-enter, be considered new employes."

The Employees further contend that Mr. Basque was in the employ of the Champlain Silk Mills at Whitehall, N. Y., from October 1, 1946, to March 21, 1947. Upon being interviewed, this employe claims that inasmuch as there was no railroad position with duties sufficiently light for him to perform, he applied for the job with the Champlain Spinners of Whitehall. He was accepted and was employed by that concern from October 1, 1946, to March 21, 1947. Mr. A. R. Hoffman, Employment Manager of Champlain Spinners, advised that Mr. Basque's duties consisted of weighing small boxes of yarn and recording weights on reports, which duties are considered light work.

It is the Carrier's position that this employe was properly carried on leave of absence account illness due to injuries received in military service, which is supported by statements of his doctors, and that he did not forfeit his seniority as claimed by the employes under Rule 4 of the Agreement.

(Exhibits not reproduced.)

OPINION OF BOARD: This is a claim of the organization that the name of Charles A. Basque be removed from the Clerks' Roster and that Homer K. Martin be compensated for all wage loss on account of the fact that he was displaced by Basque, also that all others who suffered loss by displacement because of the Carrier permitting Basque to exercise seniority over Martin be compensated.

In determining the questions involved here it becomes necessary to give consideration to the following rules of the Agreement:

Rule 4. Employes voluntarily leaving the service will forfeit all seniority and if they re-enter, be considered new employes."

"Rule 19. (a) Except as provided in Rule 45 (e), employes who have occupied a position within the scope of this Agreement for one year or more, may, upon request, be granted leave of absence. Not more than ninety (90) days' leave shall be granted in a twelve-month period, starting with the first day off duty, except upon agreement between the Management and the General Chairman.

(b) Employes failing to return upon expiration of leave of absence will forfeit their seniority unless an extension has been obtained and provided that such failure to return to service has not been brought about by sickness or other unavoidable cause.

(c) This Rule does not apply to absence account personal illness.

(d) * * *

"Rule 20. An employe returning after a leave of absence or when relieved from temporary assignment, official or excepted position, may return to former position providing it has not been abolished or senior employe has not exercised displacement rights thereon, or may upon return or within five (5) days thereafter, exercise seniority rights on any position bulletined during such

absence. In the event employee's former position has been abolished or senior employee has exercised displacement rights thereon, the returning employee will have the privilege of exercising seniority rights over junior employees if such rights are asserted within five (5) days after his return. Employees displaced by his return will be affected in the same manner.

This Rule will not apply to regular or extra employees who are granted leave of absence to enter lines of endeavor beyond the scope of this Agreement unless exception is agreed to by Management and the General Chairman."

"Rule 47. Effort will be made to furnish employment (suited to their capacity) to employees who have become physically unable to continue in service in their present positions."

Basque was employed as an extra clerk in July, 1942 and in December of the same year he was granted leave of absence for military service. On December 31, 1945, he returned to service as a yard clerk at Whitehall and the following day was assigned as freight checker at Glens Falls. He did not work the position on account of physical disability. On February 16, 1946, he was granted leave of absence on account of illness. Four days later he submitted a doctor's certificate and continued on leave on account of illness. On August 16, 1946 he again submitted a doctor's certificate and was continued on leave of absence. The record does not disclose any contract between Basque and the Carrier or the Organization thereafter until April 9, 1947. In the meantime from October 1, 1946 until March 21, 1947 he was employed at light work as a porter at a silk mill. On March 21, 1947 he was furloughed from that position. He was allowed by the Carrier to exercise seniority on the position in question on the basis of his employment before his war service and his employment thereafter pursuant to his assignment as yard clerk at Whitehall.

The Organization does not question the propriety of the assignment at Whitehall but insists that thereafter he lost or surrendered his seniority rights.

As to Rule 4, it can hardly be said that he lost his seniority by voluntarily leaving the service. Everything that was done was inconsistent with any such purpose or intention. When he left after return from military service it was on leave of absence on account of illness. His return in 1947 indicated an intention to return after disability had been removed.

Rule 19 is the general leave of absence rule and if Basque under the circumstances disclosed shall be held to have been amenable to its provisions it would be necessary to say that he lost his seniority. The terms though of the rule itself make it inapplicable to him. It will be noted that it has no application to absence on account of personal illness. Basque's was such an absence.

Rule 20 is the one which protects the seniority rights of an employee when he returns to service after having been on leave of absence. This rule preserves the rights of all employees returning after leave of absence except those who are granted leave to enter lines of endeavor beyond the scope of the Agreement without agreement between Management and the General Chairman that seniority rights shall be preserved.

This rule can have no application since the record does not disclose that Basque was granted leave of absence to enter lines of endeavor beyond the scope of the Agreement. It discloses that his leave of absence was on account of illness.

There is no showing of violation or evasion of Rule 47, hence it may not be said that on this basis the claim has been sustained.

An analysis of all of the pertinent rules and an application thereto of the facts does not indicate that the Agreement has been violated.

FINDING: 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 claim has not been sustained.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 28th day of May, 1948.