Award No. 3834

Docket No. CL-3769

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

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

LACKAWANNA AND WYOMING VALLEY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the name of Mr. Clyde Dendle is improperly shown on the current Clerks' Roster, and that

The name of Clyde Dendle shall now be removed from the Clerks' Roster.

EMPLOYES' STATEMENT OF FACTS: Mr. Clyde Dendle entered the service of the Carrier on a position coming within the scope of the Clerks' Agreement on November 1, 1937 and is presently listed as No. 19 on said Roster.

On or about June 18, 1941, Mr. Dendle accepted employment with the Carrier as a Trainman and is presently listed as No. 37 on the Trainmen's Roster with a seniority date of June 18, 1941. Mr. Dendle is presently assigned a regular run in the capacity of a Trainman.

POSITION OF EMPLOYES: There is in evidence an Agreement between the parties hereto bearing effective date of September 1, 1941 in which the following Rule appears:—

Rule 4. RE-ENTERING THE SERVICE

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

It is the position of the employes that Mr. Dendle voluntarily left the service coming within the scope of the current Clerks' Agreement and has accordingly forfeited all seniority under said Agreement.

In view of this fact Mr. Dendle's name should not appear on the Clerks' Roster.

CARRIER'S STATEMENT OF FACTS: Mr. Clyde Dendle entered the employ of Lackawanna and Wyoming Valley Railroad Co., November 1, 1937. On Sept. 1, 1940 an Agreement was negotiated between the L. & W. V. and Clerks' Union, in accordance with which a roster was published containing the names of employes coming under said agreement. This roster listed name

OPINION OF BOARD: The System Committee asks that the name of Clyde Dendle be removed from its seniority roster.

The record establishes that the Clerks' Roster of January 1, 1946, lists Clyde Dendle as No. 19 with seniority as of November 1, 1937.

Dendle entered the service of the Carrier on November 1, 1937, on a position the work of which was within the scope of the Clerks' Agreement. Consequently, when the present Clerks' Agreement was entered into, effective as of September 1, 1940, he was given seniority as of November 1, 1937.

Subsequently, on June 18, 1941, Dendle changed the nature of his employment and entered the Carrier's service as a Brakeman, which position is within the scope of the Trainmen's Agreement. He is presently listed on its roster as No. 37 with seniority as of June 18, 1941, and continues working in that service.

Rule 4 of the Clerks' Agreement provides:

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

It should be stated that since September 1, 1940, the effective date of the Clerks' Agreement, the question here presented is completely controlled by the provisions of that Agreement and not by those of the Agreement of the Brotherhood of Railroad Trainmen, for the latter Organization is not a party to the Clerks' Agreement.

The word "service" in Rule 4 relates itself solely to the Agreement of which it is a part; that is, service within the scope of the Clerks' Agreement. Since Dendle cannot bring himself within the exceptions provided by Rule 6(c) and (d) of the Clerks' Agreement he forfeited all rights to seniority thereunder by the provisions of Rule 4 when he entered the service of the Carrier on June 18, 1941, as a Brakeman, a service not within the scope of the Clerks' Agreement.

We find the position of the System Committee that Clyde Dendle should not be listed on its roster, to be well taken and that his name should be removed therefrom.

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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 26th day of March, 1948.