

Award No. 14882
Docket No. CL-15543

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John H. Dorsey, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD
COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL 5752) that:

1. Carrier violated the Clerks' Rules Agreement at Milwaukee, Wisconsin when it failed to call the senior available employee for overtime.
2. Carrier shall now be required to compensate Employee G. E. Dietrich for eight (8) hours at the time and one-half rate of pay of Position No. 0980 on April 28, 1964.

EMPLOYEES' STATEMENT OF FACTS: Employee G. E. Dietrich, who has a seniority date in District No. 22 of April 22, 1949, is regularly assigned to Train Clerk Position No. 0972 at Muskego Yards, Milwaukee, from 11:59 P. M. to 7:59 A. M., Monday through Friday with Saturday and Sunday rest days.

Employee W. E. McIntosh, who has a seniority date in District No. 22 of October 17, 1950, is regularly assigned to Teletype Train Clerk Position No. 0964 at Muskego Yards, Milwaukee, from 11 P. M. to 7 A. M., Monday through Friday with Saturday and Sunday rest days.

Train Clerk Position No. 0980, also in Seniority District No. 22, is regularly assigned at the Air Line Yard, Milwaukee, from 8 A. M. to 4 P. M. Tuesday through Saturday with Sunday and Monday rest days.

While all three of the above mentioned Train Clerk positions are shown on the seniority roster for District No. 22 with a location of "Muskego", the location of Position No. 0980 is shown on the bulletins as "Air Line Yard" whereas the location of Positions No. 0964 and No. 0972 is shown on the bulletins as "Muskego Yard". However, the actual work location of

straight time basis under the provisions of Rule 12(e) and being that the Carrier did not have sufficient time to exercise its inherent right to hire a new employee to fill said temporary vacancy on a straight time basis, it became necessary to fill said temporary vacancy on an overtime basis and employee McIntosh, who was due to complete his own assignment at **Muskego Yard** at 7:00 A. M., thereby giving him one (1) hour to travel the distance of one (1) mile between **Muskego Yard** and **Air Line Yard**, was called to fill and did fill, on an overtime basis, the temporary vacancy on Position 0980 at **Air Line Yard** on April 28, 1964.

Claimant Dietrich, for reasons that will be fully explained in "Carrier's Position", was not available for the service with which we are here concerned.

Attached hereto as Carrier's Exhibits are copies of the following letters:

Letter written by Mr. S. W. Amour, Assistant
to Vice President, to Mr. H. V. Gilligan,
General Chairman, under date of October 19,
1964 Carrier's Exhibit "A"

Letter written by Mr. Amour to Mr. Gilligan
under date of March 1, 1965 Carrier's Exhibit "B"

(Exhibits not reproduced.)

OPINION OF BOARD: On April 28, 1964, Train Clerk Position No. 0980 at the Air Line Yard, Milwaukee, with regularly assigned hours from 8:00 A. M. to 4:00 P. M. was temporarily vacant and it was necessary to fill the position on an overtime basis. An employee who was junior to Claimant was called and filled the position.

Claimant's regularly assigned position was at Muskego Yard, Milwaukee, one mile distant from Air Line Yard. Its hours were from 11:59 P. M. to 7:59 A. M.

The issue is whether Claimant was available to fill the vacancy on Position No. 0980. Carrier says he was not since it would have been impossible for him to complete his regular assignment at 7:59 A. M., travel one mile in one minute and report at the regularly assigned starting time of Position No. 0980, 8:00 A. M.

We find Carrier's defense well taken. As we said in Award No. 13808:

"We think the Carrier was entitled to seek an employee who was **available** to fill the entire 8 hour vacancy, for which 8 hours' pay was to be provided. Claimant Crawford was not available for the entire vacancy . . . Since the vacancy was for a scheduled 8 hour period and Claimant Crawford was known not to be available for this period, we conclude that the Carrier was not obligated . . ."

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;

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of October 1966.