



Award No. 18969
Docket No. CL-19125

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Clement P. Cull, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD CO.**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6873) that:

1) Carrier violated the Clerks' Rules Agreement at St. Paul, Minnesota when, pending the filling of temporarily vacant Reservation & Information Clerk Position 18660, the duties thereof were performed by carrier officials.

2) Carrier shall compensate employe O. S. Nesheim for eight (8) hours at the time and one-half rate of Reservation & Information Clerk Position 18660 for each of the following days:

September 23, 24, 1969
October 8, 9, 15 and 16, 1969.

EMPLOYEES' STATEMENT OF FACTS: Employe O. S. Nesheim, who has a seniority date of November 2, 1955 in Seniority District No. 113, is the regularly assigned occupant of a vacation relief position. This assignment when engaged in the performance of vacation relief work fills the assignment of the position of the vacationing employe and when not so engaged, is assigned from 8 A. M. to 4:30 P. M., Monday through Friday, with Saturday and Sunday rest days.

Due to a temporary vacancy of approximately 60 days duration on Relief Position No. 1, Bulletin #21 dated September 19, 1969 was issued advertising that position. The regularly assigned occupant of Reservation & Information Clerk Position 18660 was the successful applicant for Relief Position No. 1, leaving Position 18660 temporarily vacant.

Bulletin No. 23 issued September 19, 1969 to employes in District No. 113 advertised Position No. 18660 for bid, but produced no applicants.

In lieu of hiring a new employe, or using regularly assigned employes in the seniority district on overtime to fill the vacancy on Position 18660, the

Letter written by Mr. L. W. Harrington
to Mr. H. C. Hopper under date of
July 7, 1970Carrier's Exhibit "G"

(Exhibits not reproduced.)

OPINION OF BOARD: Because of a temporary vacancy in Position #18660 Reservation, Information Clerk in Room 212, St. Paul Union Station, St. Paul, Minn., Carrier bulletined the position on September 29, 1969. No applications were received within the time limits provided by the agreement and the position remained vacant from September 22 until November 20, when the owner of the position returned. Although not relevant here the position was subsequently abolished on March 20, 1970.

Regularly employed in the same office were the District Manager-Passenger Sales and a Passenger Sales Representative, neither of whom were within the Organization's agreement. The duties of these individuals were related to the main function of the office, promoting travel. These duties involved solicitation of business, answering inquiries, routing, reservations, schedules and other details normally associated with such an enterprise. The Reservation, Information Clerk assisted the District Manager and the Sales Representative.

Claimant seeks compensation for the days in question on the basis that the District Manager and Sales Representative performed work within the Scope of the Organization's Agreement and he should have been called to perform it. Leaving aside the question of the Carrier's right to blank the position on the days in question we must consider whether the Organization has proved that Clerk's work was done as alleged.

During the handling on the property sworn statements were submitted by the District Manager and Sales Representative stating in effect that the work performed by them during the period of the vacancy was no different than the work they normally performed. These statements were not refuted by the Organization.

It has been held in so many cases that citation of them is unnecessary that the burden of proving a violation of the agreement and that the work involved was exclusively reserved for the Organization rests with Petitioner. The record is devoid of proof that the District Manager and Sales Representative did perform work reserved exclusively to the Clerks during the period in question.

On the basis of the foregoing the Petitioner has not sustained its burden and the claim must be dismissed.

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 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 Agreement was not violated.

AWARD

Claim dismissed.

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

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 28th day of January 1972.