

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22841
Docket Number CL-22557

Richard R. Rasher, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station **Employees**
(Chicago, Milwaukee, St. Paul and Pacific
(Railroad Company

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood (GL-8566) that:

1) Carrier violated the Clerks' Rules Agreement at Janesville, Wisconsin **commencing** on November 8, 1976 when it failed and/or refused to fill the vacancy on Yard Clerk Position No. 52640 in **its** entirety.

2) Carrier shall now be required to compensate **Employee** J. Friedrich an additional eight (8) hours at the time and one-half rate of Position No. 52640 for November 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 22, 23 and 24, 1976.

OPINION OF BOARD: Carrier has been charged with violating the Clerks' Agreement at Janesville, Wisconsin, by failing to fill a vacancy on Yard Clerk Position No. 52640 in its entirety, on November 15, 16, 17, 18, 19, 22, 23 and 24, 1976. The **Rule** in question, Rule 32, reads **in** pertinent part as follows:

RULE 32 - OVERTIME

"(f) In working overtime before or after **assigned** hours . . . the employe regularly assigned to position on which overtime is required will be utilized. **It** is understood that the word 'regularly' as **contained** in this Rule 32(f) means that the employe who occupies a position either temporarily or permanently at the time overtime work occurs will be used for the **overtime** work.

"(g) When additional help is required for overtime work or when the duties to be performed on overtime cannot be identified with a specific position, **employees** will be assigned to such overtime in accordance with seniority, fitness and ability, first from the subdivision of the department . . ."

During the claim period, November 15 through November 24, 1976. a vacancy existed on Position 52640, Yard Clerk, located at Janesville, Wisconsin. The assigned hours of Position 52640 were 3:00 p.m. to 11:00 p.m., Saturday and Sunday rest days. Claimant occupied Position 51050, Demurrage Clerk, Janesville, Wisconsin, and his hours were **5:30** a.m. to **2:30** p.m., Saturday and Sunday rest days. Both positions carried the same rate of pay.

To partially fill the vacancy the Carrier required the Third Trick Clerk to report for work four hours early. The Organization contends that the position should have been filled for eight hours and that Claimant should have been used to fill the position even though he was junior to the Third Trick Clerk who worked the position for four hours and junior to two other **employees** that the Carrier alleges would have been called before Claimant if Carrier chose to fill the position for its full eight hour assignment.

The Organization strongly contests Carrier's right to blank four hours of the assignment, however, they cite nothing in the controlling agreement which persuades us that this practice is prohibited. The Organization cites several awards regarding blanking of vacancies, but none seem to be applicable to the instant matter. Moreover, the case is replete with serious conflict in the basic facts pertaining to the situation. **This** Board is unable to resolve such factual conflicts. The claim will be denied.

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

Carrier did not violate Rule 32.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this **16th. day** of May 1980.