



Award Number 17823

Docket Number CL-18167

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Arthur W. Devine, Referee

**PARTIES TO DISPUTE:**

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

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

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood (GL-6549) that:

- 1) Carrier violated the Clerks' Rules Agreement at Chicago, Illinois when in lieu of calling and using employe P. J. Lasky it called and used junior employe J. Desiderato to perform overtime work occurring on Position No. 480.
- 2) Carrier shall now be required to compensate employe P. J. Lasky for eight (8) hours at the time and one-half rate of Position No. 480 for October 14, 1967.

**EMPLOYEES' STATEMENT OF FACTS:** Employe P. J. Lasky, who has a seniority date of August 9, 1955 in Seniority District No. 30, is the regularly assigned occupant of a Relief Clerk Position at Division Street, Chicago, Illinois, and is assigned to relieve the following positions:

Yard Clerk, Pos. 371, 7 A.M.-3 P.M.—Wednesday and Thursday;

Train Clerk, Pos. 479, 7 A.M.-3 P.M.—Friday and Saturday;

Train Clerk, Pos. 480, 3 P.M.-11 P.M.—Sunday;  
(Rest Days—Monday and Tuesday).

Employe J. J. Desiderato, who has a seniority date of February 10, 1965 in Seniority District No. 30, is the regularly assigned occupant of a Relief Clerk Position and is assigned to relieve the following positions at Bensenville, Ill.

Train Clerk, Pos. 451, 3 P.M.-11 P.M.—Wednesday;

Yard Clerk, Pos. 465, 3 P.M.-11 P.M.—Thursday and Friday;

Utility Clerk, Pos. 459—3 P.M.-11 P.M.—Saturday & Sunday  
(Rest Days—Monday and Tuesday).

On Saturday, October 14, 1967, Train Clerk Position 480 at Division Street, Chicago, was temporarily vacant due to the illness of the regular occupant. Division Street Yard and Bensenville Yards are approximately 15 miles apart. In lieu of using senior employe Lasky to fill that temporary vacancy, junior employe Desiderato was contacted by telephone by Chief

own volition. He was assigned thereto in accordance with the provision of Rule 9(g), and for such service performed by him on this position he was properly paid eight hours at the applicable straight time rate of pay of Position 480.

Claimant Lasky, on Saturday, October 14, 1967, worked his regularly assigned relief position relieving Position 479, assigned hours 7:00 A.M. to 3:00 P.M., located at Division Street, Chicago, Illinois, and for such service performed by him on his regularly assigned work day, he was properly paid eight hours at the straight time rate of pay applicable to Position 479.

For the record, J. Desiderato, on Sunday, October 15, 1967, worked Position 382, assigned hours 10:00 P.M. to 6:00 A.M., located at Division Street. Desiderato requested and was assigned to this position under the same provisions of the applicable rule (Rule 9(g)) that he was able to perform service in the preceding day on Position 480, October 14, 1967.

No claim, however, was submitted by Claimant Lasky or, for that matter, by any other employee in connection with J. Desiderato's above-mentioned assignment to Position 382 on Sunday, October 15, 1967 at Division Street.

There is attached hereto as Carrier's Exhibit "A" copy of letter written by Mr. S. W. Amour, Vice President-Labor Relations, to Mr. H. C. Hopper, General Chairman, under date of April 3, 1968.

(Exhibits Not Reproduced)

**OPINION OF BOARD:** The claim herein arose in connection with the filling of a one-day vacancy on position No. 480 at Carrier's Division Street office, with assigned hours 3:00 P.M. to 11:00 P.M., on Saturday, October 14, 1967.

The vacancy was filled by clerk J. Desiderato, who occupied a regular relief assignment at Bensenville, Illinois, with hours 3:00 P.M. to 11:00 P.M. on Saturdays and Sundays. The Carrier contends that the use of Desiderato on position No. 480 on October 14, 1967, was in accordance with the provisions of Rule 9(g) of the Agreement which provides:

"New positions or vacancies of thirty (30) days or less duration shall be considered as temporary and may be filled by an employee without bulletining; if filled, the senior qualified employee requesting same will be assigned thereto."

The Carrier says that Desiderato formerly held a regular position at the Division Street office, was displaced therefrom by a senior employee, and that he had on several occasions informed the Chief Clerk at Division Street of his desire to work at Division Street in preference to any other location.

The Carrier has submitted an affidavit from the Chief Clerk at the Division Street office to the effect that when position No. 480 became vacant on October 14, 1967, he telephoned Desiderato and asked him if he wanted to work the position and Desiderato replied in the affirmative.

Based upon the entire record we find that for all intents and purposes, Desiderato requested and was assigned to work position No. 480 at Division Street on October 14, 1967, in accordance with Rule 9(g) of the Agreement. There was no overtime involved, and we find no support for the claim in behalf of Claimant under Rules 32(g) and (h), relied upon by the Petitioner. The claim will, therefore, 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

That the Agreement was not violated.

**A W A R D**

Claim denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of Third Division

**ATTEST:** S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 10th day of April 1970.