

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41695
Docket No. MW-41299
13-3-NRAB-00003-100171**

The Third Division consisted of the regular members and in addition Referee George E. Larney when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
PARTIES TO DISPUTE: (
(Soo Line Railroad Company (former Chicago,
(Milwaukee, St. Paul and Pacific Railroad Company)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it failed and refused to rescind Bulletin #NO-158, issued May 7, 2007, for the track inspector position at Winona, Minnesota with improper work days of Sunday through Thursday and improper rest days of Friday and Saturday and reissue a bulletin for said track inspector position with work days of Monday through Friday and rest days of Saturday and Sunday (System File C-06-07-040-01/8-00430-025/0-0149-001 CMP).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant T. Heffernan, or Claimant M. Becker, or any other employee who was subsequently assigned to work the aforesaid track inspector position with the improper rest days of Friday and Saturday shall now be compensated for eight (8) hours at the respective straight time rate of pay for each Friday and at the applicable overtime rate of pay for all hours worked on each Sunday, beginning on May 23, 2007 and continuing.”**

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

The undisputed record evidence reflects that sometime in 1986, for reasons of operational efficiency, the Carrier established a five-day workweek for the Track Inspector position at Winona, Minnesota - Sunday through Thursday with rest days of Friday and Saturday. Although such a workweek represented a deviation from the standard five-day workweek of Monday through Friday with rest days of Saturday and Sunday as set forth in Paragraph (b) of Rule 23, the Forty Hour Work Week-Rest Days-Holidays clause of the controlling Agreement, as well as Paragraph (f) of Rule 23 which permitted an alternate five day workweek of Tuesday through Saturday with rest days of Sunday and Monday based on a contention by the Carrier that an operational problem could not be met under the provisions of Paragraph (b) nevertheless, the Organization acquiesced and let stand the establishment of the unique five-day workweek for the Track Inspector position at Winona.

In 2003, when the incumbent Track Inspector at Winona vacated the position, the Carrier bulletined the position continuing the five-day workweek for the position as Sunday through Thursday with rest days of Friday and Saturday. The Organization took exception to this workweek for the Track Inspector position at Winona. However, no decisive action was pursued until the subject claim was filed in 2007, when again, due to the position becoming vacant as a result of the incumbent retiring, the Carrier bulletined the position designating the five-day workweek as Sunday through Thursday with rest days of Friday and Saturday.

The crux of this claim rests on the Organization's assertion that the operational problem that justified the establishment of this unique five day workweek as long ago as 1986 and its continued existence in 2003, no longer was in existence in 2007 when the Carrier again bulletined the Track Inspector position at Winona advertising it with the same unique five-day workweek and consecutive rest days of Friday and Saturday. As such, the Organization argues that absent the operational problem basis upon which the five-day workweek for the Track Inspector was initially established back in 1986, but no longer was applicable, the Carrier was in violation of Paragraphs (b) and (f) of Rule 23 and has been since 2007.

In our review of the record evidence in its entirety, we discern the Organization's argument of the absence of operational problem which once justified the unique five-day workweek of the Track Inspector position at Winona to be predicated on mere assertion and, therefore, lacking any evidentiary support. That being the case, we cannot accept mere assertion as sufficient to support the Organization's position and accordingly, we rule to deny the subject claim in its entirety.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

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

Dated at Chicago, Illinois, this 16th day of September 2013.