

BEFORE PUBLIC LAW BOARD NO. 7386

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES DIVISION
IBT RAIL CONFERENCE
and
SOUTH KANSAS AND OKLAHOMA RAILROAD**

Case No. 8

STATEMENT OF CLAIM: “Claim of the System Committee of the Brotherhood that:

1. The Carrier violated Rule 7 of the Agreement when it failed and refused to properly bulletin and award a track inspector vacancy at Cherryvale, Kansas beginning on February 22, 2013 and continuing (System File 220-SK7-131).
2. As a consequence of the violation referred to in Part 1 above, Claimant N. Laney shall be afforded the requested remedy.”

FINDINGS:

The Organization filed the instant claim on behalf of the Claimant, alleging that the Carrier violated the parties’ Agreement when it failed and refused to bulletin and award a vacant track inspector position at Cherryvale, Kansas, and improperly utilized M. Landers to perform track inspection duties, causing the Claimant to lose work opportunities and monetary benefits beginning on February 22, 2013, and continuing. The Carrier denied the claim.

The Organization contends that the instant claim should be sustained in its entirety because the Carrier was obligated to bulletin and award the vacancy at issue to the Claimant under the clear and mandatory language of the Agreement, because there is no merit to the Carrier’s defense, and because the Claimant is entitled to the requested remedy. The Carrier contends that the instant claim should be denied in its entirety because the Organization has failed to meet its burden of proof, because the Claimant

was not qualified for the track inspector position in that there is no evidence that the Claimant passed the written track inspector test, because the Organization cannot establish that the Claimant was available for that position in accordance with the Agreement, because the Carrier appropriately assigned Landers to perform the work due to the unavailability of an MW Team Member, and because there was no permanent vacancy because the track inspector position had not been vacant for thirty days.

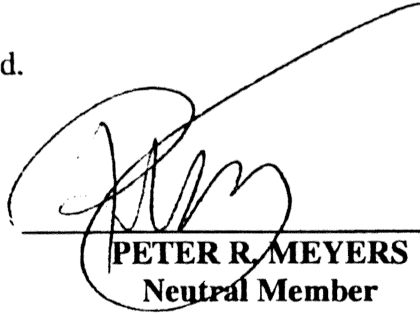
The parties being unable to resolve their dispute, this matter came before this Board.

This Board has reviewed the record in this case, and we find that the Organization has failed to meet its burden of proof that the Carrier violated the Agreement when it failed to bulletin and award a track inspector vacancy on February 22, 2013. The record reveals that the Claimant never performed the work involved because he was not qualified to perform that work. Although the Claimant may have had seniority, that was simply insufficient to have him placed in the track inspector position. The Claimant had never passed the written test for track inspector. When there is no individual qualified to perform the work, the Carrier is able to have the manager perform that work. There was no vacancy for thirty days and, therefore, there was no requirement that the position be bulletined.

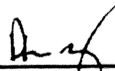
It is fundamental that the Organization bears the burden of proof in cases of this kind. The Organization has failed to meet that burden and, therefore, the claim must be denied.

AWARD:

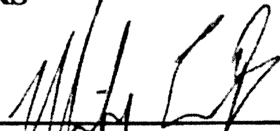
The claim is denied.



PETER R. MEYERS
Neutral Member



ORGANIZATION MEMBER
DATED: 11-21-14



CARRIER MEMBER
DATED: 11-6-14