

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 9879
Docket No. 9235
2-L&N-CM-'84

The Second Division consisted of the regular members and in addition Referee Martin F. Scheinman when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States
(and Canada
(
(Louisville and Nashville Railroad Company

Dispute: Claim of Employees:

1. That when the Louisville and Nashville Railroad Company requires its Carmen Employees to wear Hard Hats it is discriminatory in the practice and a safety hazard in certain instances, and request that,
2. The Louisville and Nashville Railroad Company be ordered to stop its discriminatory practice of making its Carmen Employees wear Hard Hats, and
3. That the Louisville and Nashville Railroad Company require that all of its Employees be required to wear a Hard Hat while on duty or in the Carrier's pay, or issues instructions that the Carmen working in the Train Yards and other non-hazardous areas not be required to wear them.

Findings:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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 waived right of appearance at hearing thereon.

In August 1977, Carrier issued written instructions mandating that "... all persons in all mechanical work areas, except in offices will wear hard hats and appropriate eye protection." In August 1979, Carmen at Carrier's Chattanooga, Tennessee facility, Claimants herein, filed this claim. In it, the Organization contended that Carrier acted arbitrarily and in violation of Rule 32 and 33 when it required Carmen to wear such hats in mechanical work areas.

Rule 32 reads, in relevant part:

"32(a) Should an employe subject to this agreement believe he has been unjustly dealt with, or any of the provisions of this agreement have been violated, the case shall be handled in accordance with the provisions contained in Appendix 'D', Article V, by the duly authorized committee or their representative."

"33(a) Should the highest designated railroad official, or his authorized representative and the duly authorized representative of the employee, as provided in Rule 32 fail to agree, the case may then be handled in accordance with the Railway Labor Act."

The Organization asserts that Carmen are required to wear hard hats when they perform duties similar to those performed by Trainmen. However, in those instances, the Organization alleges that Trainmen are not required to wear hard hats.

In addition, the Organization contends that in many instances Clerks who work along side Carmen in Train Yards are not required to wear such hats, while the Carmen are so required.

In the Organization's view, the disparate treatment of Carmen constitutes arbitrary and discriminatory action by Carrier. Thus, the Organization reasons that Carrier has "unjustly dealt with" Carmen in violation of Rule 32(a). Accordingly, the Organization asks that the claim be sustained and that either all employees of Carrier be required to wear hard hats or, the alternative, that Carmen working in non-hazardous areas not be required to wear such hats.

Carrier, on the other hand, insists that no Agreement violation exists here. It contends that it is free to promulgate safety rules which do not contravene a specific provision of the Agreement. Here, Carrier argues, it established a rule necessary to protect employees which does not violate any rule of the Agreement. Accordingly, Carrier maintains that it acted properly under the facts of this case. Thus, it asks that the claim be denied.

It is clear to us that this claim must fall. Absent provisions to the contrary, it is well established that Carrier may promulgate rules for the conduct of employees that are not included in the Agreement (see Award No. 7161). In addition, as was stated in Award No. 5987:

"General Rules promulgated by a carrier, unless they contravene the terms of a collective bargaining agreement, are mandatory standards with which an employee agrees to comply, expressly or implicitly, in his employment contract."

Here, the Agreement does not prevent Carrier from establishing safety rules for its employees. Moreover, the rule requiring Carmen to wear hard hats in mechanical work areas is reasonable. It affords safety protection to the wearers as well as providing insurance protection to Carrier.

Moreover, there has been no showing that Carmen have been treated in an arbitrary or discriminatory manner. That other crafts may not have to wear such hats is insufficient to prove discriminatory treatment. Accordingly, the claim must be rejected.

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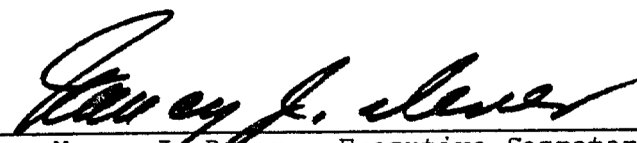
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A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:



Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 9th day of May, 1984